

260
DECLARATION OF PETITIONERS
~~EDMUND S. EHRT, ANDREW J. KEARY, AND ELLA B. KEARY~~
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 153

EDMUND S. EHRT, ANDREW J. KEARY, AND ELLA B. KEARY, PETITIONERS,

vs.
HANKS & POSTON

ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 512

EDMUND L. EBERT, ANDREW J. KEARY, AND ELLA R.
KEARY, PETITIONERS,

vs.

HARRY P. POSTON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF MICHIGAN

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[fol. a]

CALENDAR ENTRIES

1920.

- Aug. 19. Bill of complaint filed, summons issued.
- Sept. 24. Appearance of defendants filed, entered.
- Oct. 23. Answer of defendants filed.

1921.

- Feb. 23. Motion to advance cause for trial, filed.
 - Mar. 17. Notice to produce letter filed.
 - Mar. 18. In progress; court sheet, Judge A. Webster; \$3.00 Sten.
 - Mar. 21. Heard and submitted; court sheet, Judge A. Webster.
 - Apr. 6. Notice to produce contracts, etc., and proof of service filed.
 - Oct. 12. Opinion signed, filed.
 - Oct. 22. Decree signed, filed, entered; Judge A. Webster; \$3.00; L. 16-388.
 - Oct. 22. Order, plaintiff allowed 20 days' stay of proceedings, 20 days to move for a new trial, 20 days to settle bill of exceptions, all from entry of judgment; court sheet, Judge A. Webster.
 - Oct. 29. Taxed bill of costs taxed at \$40.90 filed.
 - Nov. 10. Claim of appeal filed, \$5.00.
 - Nov. 12. Substitution of attorneys for plaintiff filed.
 - Nov. 12. Stipulation and order extending time signed, filed, entered. L. 60, p. 229.
 - Dec. 10. Motion for extension of time filed.
 - Dec. 12. Proof of service of motion filed.
- [fol. b]
- Dec. 12. Order extending time signed, filed, entered. L. 60, p. 434.
 - Dec. 12. Stenographer's certificate filed.

1922.

- Feb. 11. Stipulation and order for extension of time, etc., signed, filed and entered. L. 61, p. 553.
- Feb. 28. Stipulation and order extending time, etc., signed, filed and entered. L. 62, p. 286.
- Mar. 6. Stipulation and order extending time, etc., signed, filed, entered. L. 62, p. 338.
- Mar. 10. Stipulation and order extending time, etc., signed, filed, entered. L. 62, p. 402.
- Mar. 16. Stipulation and order extending time, etc., signed, filed, entered. L. 62, p. 472.
- Mar. 20. Motion for extension of time filed.
- Mar. 21. Proof of service of motion filed.
- Mar. 21. Order for extension of time signed, filed, entered. L. 62, p. 516.
- Apr. 6. Stipulation and order extending time signed, filed, entered. L. 63, p. 131.
- Apr. 12. Case made on appeal signed, filed.
- May 17. Return made to Supreme Court this date.

[fol. 1] STATE OF MICHIGAN:

SUPREME COURT

No. 30420

Dr. HARRY P. POSTON, Plaintiff,

v.

EDMUND L. EBERT, ANDREW J. KEARY, and ELLA R. KEARY,
Defendants.

Appeal from the Circuit Court for the County of Wayne. In
Chancery

Hon. Arthur Webster, Circuit Judge

IN CIRCUIT COURT OF WAYNE COUNTY

BILL OF COMPLAINT—Filed August 19, 1920

To the Circuit Court for the County of Wayne, In Chancery:

Your orator, Dr. Harry P. Poston, of the City of Detroit, Wayne County, Michigan, as plaintiff herein, files this as his Bill of Com-[fol. 2] plaint and thereupon he complains of Edmund L. Ebert, Andrew J. Keary and Ella R. Keary, as defendants herein, and thereupon your orator respectfully represents unto the court as follows:

1. Your orator represents that he is a resident of the City of Detroit, Wayne County, Michigan, and has been for upwards of four years last past, including therein the period of your orator's military service.

2. Your orator further says that on to-wit the sixteenth day of May, 1916, your orator purchased the property known and described as:

Lots numbered thirty-two (32), thirty-five (35), thirty-seven (37), thirty-nine (39), forty-one (41), forty-three (43), forty-five (45) and forty-seven (47) in Sunnyside subdivision of Quarter (¼) Section one (1), Ten Thousand Acre Tract, Hamtramck, according to the plat thereof recorded December 31, 1892, in Liber Eighteen (18) of Plats, on page Two (2) in the office of the Register of Deeds for Wayne County, Michigan,

said premises being situated on the east side of McDougall Avenue, between Davison and Edward Avenues, and the conveyance of said premises to your orator being recorded by record of Deeds, one dated February 20, 1917, recorded in Liber 1154, page 507 of Deeds recorded March 2, 1917, and one by record of deed dated May 16, 1917, recorded May 18, 1917, in Liber 1197 of Deeds, on page 379,

reference to which is hereby made as a part hereof, said records being contained in the office of the Register of Deeds for Wayne County, Michigan.

3. Your orator further represents unto this honorable court that the consideration for said conveyance to your orator was the sum of [fol. 3] approximately \$500.00 per lot, making the total consideration the sum of to-wit Four Thousand Dollars.

4. Your orator further represents that the conveyance to your orator was by warranty deed, so-called, but expressly made subject, however, to "a real estate mortgage in the sum of \$200 on each lot or parcel of land aforesaid, which the second party hereby assumes and agrees to pay," and your orator represents that this was the sole knowledge that your orator had with reference to any mortgage upon said premises, because of his unfamiliarity with real estate transactions and means and sources of knowledge, and that your orator believed that he might safely rely upon learning who the mortgagees were and as to the terms and conditions of the mortgage by demand from the mortgagees for the interest upon the mortgage when it should become due; and that your orator had no attorney in said transaction nor had he previously had any occasion for consultation with counsel.

5. Your orator further shows unto this court, upon information and belief, that the mortgage referred to in the preceding paragraph hereof is the one given by Eddie A. Hulett and Nellie E. Hulett, his wife, to Andrew J. Keary and Ella R. Keary, his wife, of date September 26, 1916, and recorded on September 27, 1916, in the office of the Register of Deeds for Wayne County, Michigan, in Liber 795 of Mortgages on page 506, mortgaging the premises hereinbefore stated to have been purchased by your orator among twenty lots in said mortgage mentioned as being mortgaged for a total principal [fol. 4] sum of \$4,000, which said mortgage is hereby expressly referred to as a part of this, your orator's bill of complaint.

6. Your orator further represents that he has now learned from the records of the Register of Deeds for Wayne County, Michigan, that the part of the mortgaged premises purchased by your orator purports to have been sold at mortgage sale for the total sum of \$1,756.64, by Otto G. Klanowsky, deputy sheriff, in the name of Eddie A. Hulett and Nellie E. Hulett, his wife, to the defendants Andrew J. Keary and Ella R. Keary, husband and wife, as evidenced by Sheriff's Deed of date February 5, 1918, recorded on February 7, 1918, in the office of the Register of Deeds for Wayne County, Michigan, in Liber 1932 of Deeds on page 526, as will more fully appear by reference to said recorded deed with the thereto attached notice of sale, affidavit of publication and evidence of sale hereby expressly referred to as a part of this, your orator's bill of complaint.

7. Your orator further shows unto this honorable court that said Sheriff's Deed aforesaid constitutes a cloud upon the title of your orator in and to said premises and should be removed therefrom by

this honorable court upon such terms as this court shall deem equitable; and further that your orator should have a right to redeem said premises from the mortgage upon it because said mortgage sale was defective; because your orator had a right to redeem said property and tendered redemption money therefor to the defendants herein which was wrongfully refused; because your orator tendered [fol. 5] redemption money to the Register of Deeds for the County of Wayne which was wrongfully refused; because of the fraud and deceit practiced upon your orator by the defendants herein as hereinafter set forth, and because of your orator's having been in the military service of the United States and being therefore entitled to the benefit of the provisions of the Soldiers' and Sailors' Civil Relief Act, so-called, all as hereinafter set forth.

8. Your orator further represents unto this honorable court that he entered the military service of the United States as a First Lieutenant in the Medical Corps on September 29, 1918, before he had any knowledge or information as to the claimed mortgaged foreclosure sale and months before the period of redemption would have expired had your orator known of the claimed mortgage foreclosure sale; and that at no time was demand made upon your orator for payment of said mortgage, but that on the contrary your orator was informed by the defendants herein that the defendants Keary had no intention or desire to foreclose said mortgage under the circumstances as your orator explained them of your orator's desire to enter the military service, but were perfectly willing and desirous of continuing said mortgage in effect, being satisfied with the protection afforded their principal by the mortgage and the security for interest thereon.

9. Your orator further shows that when the United States of America entered the World War, that your orator had then been in Detroit but to-wit two years and was greatly in debt by reason of two years' intensive post-graduate study as a specialist at Johns Hopkins [fol. 6] University at Baltimore, Maryland, and previous regular collegiate medical study, without earnings, and no financial resources of his own, although your orator had at the opening of the World War been married for to-wit seven years and had a child then of the age of to-wit six years. That at the opening of the World War your orator had an indebtedness of upwards of \$3,000 exclusive of the mortgage indebtedness herein. That your orator had just begun to become really established in the practice of medicine in the City of Detroit with a fine office and equipment at 1337 David Whitney Building, Detroit, and that your orator's medical practice was but just developing to where it was becoming a splendidly paying proposition as to prospects and was then worth upwards of \$5,000 a year net.

10. Your orator further shows that he is an American by birth, blood, ancestry, history and tradition dating back to when the Postons first came to this country among the very earliest settlers from Eng-

land in the year 1650. That your orator's ancestors served in the Revolutionary War, War with Mexico, Civil War; that your orator's ancestor on his mother's side, William Paca, was the first governor of the State of Maryland and served two terms and was also a signer of the Declaration of Independence and also Attorney General of the State of Maryland; and that your orator's direct ancestor, John Poston, was one of the signers of the First or Mecklenberg Declaration of Independence signed in Mecklenberg County, North Carolina by those sturdy American pioneers who in 1766 objected to the then tyrannical rule of England. That with such ancestry of Americans dating from 1650 to the present time, upon the entry of the United [fol. 7] States into the World War your orator felt the urge and call of generations of American blood sending him to his post of duty. That your orator's family responsibilities prevented him from immediately responding to the call, but that your orator immediately proceeded to make such preparations and arrangements as he could so that he might enter his country's service. That your orator secured concessions of time from certain of his creditors under the circumstances, and after a year's effort or thereabouts, was successful in so arranging his affairs by loans and otherwise that he was able to leave Mrs. Poston with a small amount of cash and through allowance and allotment provisions of the United States Government while your orator was in the service for the payment of regular monthly sums to her for the support of herself and child. That your orator's wife had always been well provided for and was accustomed to a home of comparative luxury and refinement, but had agreed to the sacrifices that would be entailed upon her and infant child by your orator entering the service and was in comparatively straitened circumstances during the time your orator was in the service and for some time thereafter and receiving the assistance of relatives.

11. Your orator further shows that on to-wit September 1, 1917, your orator for the first time learned by a notice received from the defendants herein that the mortgage hereinbefore referred to was about to become due.

12. Your orator further shows that he immediately negotiated with the defendants herein and explained the facts as to his financial situation [fol. 8] and desire to enter the military service and was advised and informed by the defendants that they had no desire or intention to foreclose the mortgage under the circumstances but were perfectly willing and desirous of continuing said mortgage in effect, being satisfied with the protection afforded their principal and interest by the mortgage. Your orator further shows unto this honorable court that he in truth and fact relied upon said representations of the defendants herein and was deceived thereby; and that said defendants thereafter and at said time were traitorously, falsely and fraudulently conspiring to cheat and deceive your orator as to their subsequent intended foreclosure of the mortgage upon said property so that your orator not being aware of the actual facts and relying

upon their representations and being deceived thereby might, if possible, lose his rights and the defendants greatly profit thereby.

13. Your orator further says that until September, 1918, your orator still maintained his office at 1337 David Whitney Building, Detroit, that being the month in which he entered the military service, and that said defendants in furtherance of their conspiracy traitorously, falsely and fraudulently to cheat and deceive your orator, as your orator believes the facts to be, deliberately refrained from notifying your orator of a mortgage sale of said premises advertised by said defendants and held on to-wit February 5, 1918, without the knowledge of your orator.

14. Your orator further says that immediately previous to leaving the City of Detroit to engage in his military service, he consulted with a friend who was also an attorney at law and an ex-soldier with reference to his financial affairs, and your orator was then advised that as to any indebtedness of your orator, the United States Government was giving full and adequate protection to him, as to all entering the military service, against being prejudiced or jeopardized by reason of being in the service, and that remedies against those in military service were abated in such cases as that of your orator during the period of war and for a period of to-wit six months thereafter. Your orator further says that he relied upon such expert information and counsel.

15. Your orator further shows and is prepared to prove to this court that following the Armistice of November 11, 1918, so-called, believing the World War to be at an end and because of his financial affairs and that of his wife and child, your orator exerted every influence to procure his prompt discharge from the military service so that he might meet his financial obligations.

16. Your orator further shows that he entered the military service on to-wit September 27, 1918, and was discharged on May 14, 1919, and after strenuous effort finally procured priority as to discharge under the ruling of the military authorities on account of being urgently needed at home to provide for his family, and because of the condition of your orator's health which was then giving way under the strain of intense application to military duties.

17. Your orator further says that he did not return to Detroit until the latter part of July, 1918, or early in August, 1918, because of the imperative requirement of rest and immediate recuperation.

[fol. 10] 18. That your orator's service consisted largely of receiving transports with casualties at the point or port of debarkation; that the wounded would be placed upon special trains for transportation from Maine to Florida and from Oregon to California and that your orator was breaking down due to the shortage of physicians, frequently twenty-four hours duty on without rest or sleep on trains in the responsible duty of being in charge of large bodies of wounded soldiers conveying them to military hospitals.

19. Your orator further shows that upon his return to Detroit his finances were at a very low ebb; his medical practice had been ruined; he had no office in which to re-open and it was impossible under then conditions in Detroit to secure one and that in order to secure means of subsistence your orator endeavored to dispose of his interest in the mortgaged premises when he for the first time learned of the mortgage foreclosure.

20. Your orator further says that he immediately communicated with the defendants herein who recognized your orator's right to redeem and admitted it and was advised by them of the amount necessary to redeem said property from said mortgage foreclosure sale, which they expressed a willingness to receive.

21. Your orator further says that he advised said defendants of his financial condition and that being unable to redeem, your orator was rather desirous of disposing of his said property. That said defendants then negotiated with your orator for an agreed price at which they would purchase said property from your orator. That said negotiations extended over a period of time. That the offer of said defendants was so niggardly that your orator was compelled to [fol. 11] refuse the same, when finally the said defendants did state to your orator that in view of the fact that your orator did not wish to sell at their price, the one alternative remained to them of requesting that your orator redeem said property from the mortgage, and the said defendants then and there fixed the sum they claimed necessary for redemption and which they stated they were willing to accept.

22. Your orator further shows that this was on to-wit November 10, 1919, and that your orator, in reliance upon the same, used his best efforts to borrow the money thus fixed by said defendants, and finally succeeded in borrowing the same and upon to-wit November 19, 1919, with additional interest from the amount previously fixed by the defendants as then again fixed by them for the later date, and that your orator then tendered to said defendants the amount thus fixed by them, when for the first time your orator was informed that said defendants did not then know whether or not your orator might still redeem, and that said defendants would take it up with their counsel, and at said mentioned to-wit November 19, 1919, said tender was refused until said defendants could consult their counsel, as they stated it.

23. Your orator further shows that subsequently the said defendants did claim that your orator had lost his right to redeem and that they would not permit or accept a redemption.

24. Your orator further charges the truth and fact to be that the said defendants were conspiring one with the other to cheat and defraud your orator out of his rights, as they believed them to be, [fol. 12] and sought deliberately to deceive him with reference thereto so that by the expiration of time, as they believed, while they prolonged their negotiations with your orator, said defendants

might make the claim, as they subsequently did, that your orator's rights had in truth and fact expired.

25. Your orator charges the truth and fact to be that the offer of said defendants to permit your orator to redeem the property at the price fixed by them was not made in good faith, but was made solely in the belief that your orator in his then financial condition but just recently returned from the military service, would not be able to raise the amount fixed by them for redemption, and was made solely in pursuance of the conspiracy of the defendants, while pretending fairness, to cheat and defraud your orator traitorously out of his rights in said property, and to take advantage of your orator's financial situation due to his military service.

26. Your orator further says that relying in good faith upon the claim of defendants then made for the first time that they wished to consult their counsel, further time elapsed until finally said defendants did claim that your orator had no rights whatsoever in said premises.

27. Your orator further shows that subsequently and on to-wit January 13, 1920, tender was made to the Register of Deeds for Wayne County, Michigan, to redeem from said mortgage, but that said tender was refused, and that your orator has continuously held himself ready, willing and able at all times to keep good his tender, to the defendants and to the Register of Deeds aforesaid.

[fol. 13] 28. Your orator further avers, as a jurisdictional averment, that the amount involved herein is upwards of the sum of \$100; and your orator further avers the truth and fact to be that at no time were the lots foreclosed by said defendants worth less than to-wit \$500 per lot; that the sale purporting to have been had by the defendants was not a fair one in which they claimed to have purchased said lots for the sum of \$220 per lot and that your orator should be protected therefrom.

Wherefore, your orator being without relief, save in a court of equity, he prays:

(a) That a summons be issued out of and under the seal of this honorable court, to said defendants directed, therein and thereby requiring and commanding them, if they can show cause why your orator should not have the relief herein prayed for, full, true, direct and perfect answer to make unto all the matters and things in this bill of complaint set forth, as fully and particularly, sentence by sentence and paragraph by paragraph, as if the same were here again repeated and they thereunto particularly interrogated.

(b) That this court find and fix the amount which the defendants in equity and justice should receive in redemption of the mortgage foreclosure sale and on account of the mortgage and that said defendants by the decree of this court be required to accept the same.

(c) That your orator have the option of paying such amount so fixed by the court unto the clerk of this court and that upon the payment thereof to him the decree of this court may be recorded by the Register of Deeds for Wayne County as a full and complete [fol. 14] discharge and satisfaction of any and all claims which the defendants may have or claim to have in said mortgaged premises.

(d) That by the decree of this court under the facts and circumstances as hereinbefore set forth and under the provisions of the Soldiers and Sailors Civil Relief Act, so-called, and under the equitable jurisdiction of this court it may be found that your orator's time for redemption had not expired when tender was made and that your orator in justice and equity is entitled to redeem from said mortgage foreclosure sale.

(e) That this court, by its decree, find that the claimed mortgage sale was not a fair one, and was therefore invalid and of no legal effect; and that the same was in other wise and manner illegal and defective.

(f) That this court, by its decree, find the said defendants guilty of fraud and deceit to the harm and detriment of your orator, so much so as to require the interposition of this honorable court as a matter of equity to right the same.

(g) That your orator may have such other, further and different relief in the premises as shall be agreeable to equity and good conscience.

And your orator will ever pray.

(Signed) H. P. Poston. Cohane & Silverstein, by (Signed)
Louis Cohane, Attorneys and of Counsel for Plaintiff.

[fol. 15] Jurat showing the foregoing was duly sworn to by H. P. Poston omitted in printing.

[fol. 16] CIRCUIT COURT FOR THE COUNTY OF WAYNE

No. 79694

DR. HARRY P. POSTON, Plaintiff,

v.

EDMUND L. EBERT, ANDREW J. KEARY, and ELLA R. KEARY,
Defendants

DEFENDANTS' ANSWER TO BILL OF COMPLAINT—Filed October 23,
1920

To the Circuit Court for the County of Wayne, in Chancery:

The joint and several answers of Edmund L. Ebert, Andrew J. Keary and Ella R. Keary, defendants in the above entitled cause to

the bill of complaint of Dr. Harry P. Poston, the above named plaintiff.

These defendants each for himself and herself and not one for the other, saving and reserving all benefit of objection and exception to said bill of complaint, for answer thereto or to so much thereof as they jointly and each of them severally are advised it is necessary to answer, say:

(1) That they neither admit nor deny the allegations contained in the first paragraph of said bill of complaint, for want of knowledge in respect thereto, and leave the plaintiff to his proof thereof.

(2) That they neither admit nor deny the allegations contained in the second paragraph of said bill of complaint, for want of knowledge in respect thereto, and leave the plaintiff to his proof thereof.

(3) That they neither admit nor deny the allegations contained in the third paragraph of said bill of complaint for want of knowledge in respect thereto, and leave the plaintiff to his proof thereof.

(4) That they neither admit nor deny the allegations contained in the fourth paragraph of said bill of complaint for want of knowledge in respect thereto, and leave the plaintiff to his proof thereof.

(5) Defendant, Edmund L. Ebert, neither admits nor denies the allegations contained in the fifth paragraph of said bill of complaint for want of knowledge regarding said allegations and leaves the plaintiff to his proof thereof, and defendants Andrew J. Keary and Ella R. Keary admit that upon the 25th day of September, 1916, the mortgage referred to in the fifth paragraph of the bill of complaint was executed and recorded as alleged in said paragraph.

(6) They neither admit nor deny that plaintiff learned from the records of the Register of Deeds for Wayne County that the mortgaged premises had been sold at a mortgage sale as set forth in said paragraph of the bill, for want of knowledge thereof and leave the plaintiff to his proof; and defendants, Andrew J. Keary and Ella R. Keary, further answering the sixth paragraph of the said bill of complaint, allege the fact to be that the mortgage given by Eddie A. Hulett and Nellie E. Hulett, his wife, to defendants Andrew J. Keary and Ella R. Keary on the 25th day of September, 1916, referred to in the fifth paragraph of the bill of complaint and covering twenty (20) lots, said mortgage being for the sum of Four Thousand (\$4,000) Dollars, was regularly and legally foreclosed under the power of sale contained in said mortgage, a copy of which is hereto annexed marked Exhibit A and made a part hereof, in accordance with the statute in such case made and provided and that in pursuance of said sale the lots referred to in paragraph two of this bill of complaint and included among the lots described in the aforesaid mortgage marked Exhibit A were purchased by defendants, Andrew J. Keary and Ella R. Keary, and a sheriff's deed was executed to them on the 5th day of February, 1918, as more fully

appears by a copy of said sheriff's deed hereto annexed and marked Exhibit B and made a part hereof.

(7) Defendants deny that said sheriff's deed, Exhibit B, constitutes only a cloud upon the title of the plaintiff in and to said premises, and jointly and severally deny that the same should be removed by this honorable court upon any terms whatsoever and further jointly and severally deny that plaintiff should be decreed to have or has a right to redeem said premises from the mortgage sale and jointly and severally deny that said mortgage sale was defective and further deny that plaintiff has any title or interest whatsoever in said lots or any of them. Defendants further jointly and severally deny that plaintiff had a right to redeem said property and [fol.19] jointly and severally deny that redemption money therefor was tendered and jointly and severally deny that the same was wrongfully refused. Defendants jointly and severally deny that plaintiff tendered redemption money to the Register of Deeds within the time allowed by statute to redeem from the mortgage foreclosure sale and deny that tender was wrongfully refused by said Register of Deeds. Defendants jointly and severally deny that the said mortgage sale was defective because of fraud and deceit practiced upon plaintiff by the defendants herein and jointly and severally deny that any fraud or deceit was practiced upon plaintiff by defendants or either of them and jointly and severally deny that said mortgage sale was defective because of plaintiff's alleged period of military service and jointly and severally deny that plaintiff is or at any time was entitled to the benefit of the provisions of the so-called soldiers' and sailors' civil relief act.

(8) Answering the eighth paragraph of said bill of complaint, defendants jointly and severally deny that plaintiff had no knowledge or information regarding the foreclosure sale months before the period of redemption expired or that no demand was made upon the plaintiff for payment of said mortgage but on the contrary avers that they, after the said mortgage became due had eight or ten telephone communications and personal conversations with the plaintiff, advising plaintiff that said mortgage was due and would be foreclosed; that plaintiff refused and neglected to pay any attention to said warning and neglected to specify a time when he would pay the said mortgage, although repeatedly asked to do so; that the [fol. 20] defendant, Edmund L. Ebert, wrote to the plaintiff urging plaintiff to pay said mortgage before publication of notice of foreclosure and these defendants jointly and severally deny that they or either of them informed plaintiff that defendants, Andrew J. Keary and Ella R. Keary had no intention or desire to foreclose said mortgage and deny that plaintiff informed the defendants or either of them of his desire to enter the military service and deny that they were willing and desirous of continuing said mortgage in effect and deny that they were satisfied with the protection afforded by said mortgage but on the contrary allege that they had no knowledge of plaintiff's intention to enter the mili-

tary service and did not know that plaintiff had been in said service until on or about the 8th day of April, A. D. 1919, and defendants Andrew J. Keary and Ella R. Keary further allege that the lands covered by said mortgage were of unsufficient and doubtful value at the time when said mortgage became due and that the security afforded to their principal by said mortgage was at said time extremely doubtful and inadequate.

(9) Defendants neither admit nor deny the allegations contained in the ninth paragraph of bill of complaint for want of knowledge and leave the plaintiff to his proof thereof.

(10) Defendants neither admit nor deny the allegations contained in the tenth paragraph of bill of complaint, for want of knowledge and leave the plaintiff to his proof thereof.

(11) Defendants neither admit nor deny the allegations contained in the eleventh paragraph of bill of complaint for want of knowledge and leave the plaintiff to his proof thereof.

[fol. 21] (12) Answering the twelfth paragraph of bill of complaint, these defendants jointly and severally deny that plaintiff immediately or at any time negotiated with the defendants or explained to them his financial situation or informed them or either of them of his desire, stimulated by the urge of his ancestry, to enter the military service, and further deny that they or either of them at any time advised or informed the plaintiff that they or either of them had no desire or intention of foreclosing the mortgage and deny that they were willing and desirous of continuing said mortgage in effect and deny that they were satisfied with the protection afforded the principal and interest by said mortgage and on the contrary allege that they had no knowledge of plaintiff's military service until on or about the 8th day of April, A. D. 1919, and further allege that these lots were vacant, of little value and afforded inadequate security for the said mortgage debt and interest. Defendants jointly and severally deny that plaintiff relied upon any representations or that he was deceived thereby and deny that they or either of them thereafter or at said time were traitorously, falsely and fraudulently intending to cheat and deceive the plaintiff as to their subsequent intended foreclosure of said mortgage or that the plaintiff was not aware of the actual facts and deny that the plaintiff relied upon any representations or that he was deceived and deny that they or either of them profited by said foreclosure sale, but on the contrary allege that they extended to plaintiff every opportunity to pay the mortgage debt and interest thereon prior to the valid foreclosure thereof and that all proceedings connected with said foreclosure sale were open, [fol. 22] fair and in the manner provided by law. That they would at the time of said foreclosure have greatly profited by redemption of said mortgage.

(13) Answering the thirteenth paragraph of the bill of complaint defendants neither admit nor deny for want of knowledge thereof that plaintiff maintained his office at 1337 David Whitney Building

until September, 1918, or that that was the month in which he entered the military service but leave the plaintiff to his proof; and these defendants jointly and severally deny that they or either of them conspired, traitorously, falsely or fraudulently to cheat and deceive the plaintiff and deny that they deliberately or in any other way refrained from notifying plaintiff of the mortgage sale, but on the contrary allege the fact to be that plaintiff was duly notified and that said sale was duly and legally published in the manner provided by law.

(14) Defendants neither admit nor deny the allegations contained in the fourteenth paragraph of said bill of complaint for want of knowledge in respect thereto and leave the plaintiff to his proof thereof.

(15) Defendants neither admit nor deny the allegations contained in the fifteenth paragraph of said bill of complaint for want of knowledge in respect thereto and leave the plaintiff to his proof thereof.

(16) Defendants neither admit nor deny the allegations contained in the sixteenth paragraph of said bill of complaint for want of knowledge thereof, and leave the plaintiff to his proof.

(17) Defendants neither admit nor deny the allegations contained [fol. 23] in the seventeenth paragraph of said bill of complaint for want of knowledge thereof, and leave the plaintiff to his proof.

(18) Defendants neither admit nor deny the allegations contained in the eighteenth paragraph of said bill of complaint for want of knowledge in respect thereto and leave the plaintiff to his proof thereof.

(19) Answering the nineteenth paragraph of the bill of complaint, defendants neither admit nor deny, for want of knowledge, that upon plaintiff's return to Detroit, his finances were at low ebb, his medical practice ruined, that he had no office in which to re-open and that it was impossible to secure one and that he endeavored to dispose of his interest in said mortgage premises, to secure the means of subsistence and as to each of said allegations they leave the plaintiff to his proof thereof. Further answering the nineteenth paragraph of the bill of complaint these defendants jointly and severally deny that he, plaintiff, upon his return to Detroit for the first time learned of the mortgage foreclosure, but on the contrary **allege the fact** to be that prior to the date upon which plaintiff alleges that he entered the military service and subsequent to the 18th day of November, A. D. 1919, he, the plaintiff, negotiated with certain persons other than defendants herein for the sale of his interest in the said mortgage premises.

(20) In answer to the twentieth paragraph of the bill of complaint defendants jointly and severally deny that they at any time after the foreclosure sale recognized plaintiff's right to redeem and deny that they admitted it and deny that they advised plaintiff of the amount [fol. 24] necessary to redeem and deny that they expressed a willing-

ness to receive said amount or any amount whatsoever, but on the contrary allege the fact to be, did, upon request of the plaintiff, inform him as to the figure at which the sale was made and all expenses connected with said sale.

(21) Answering the twenty-first paragraph of the bill of complaint defendants jointly and severally deny that plaintiff advised them or either of them of his financial condition, or of his inability to redeem, or of his desire to dispose of said property. Defendants further jointly and severally deny that they or either of them negotiated with the plaintiff for an agreed price or any price at which they would purchase said property from the plaintiff and further deny that said negotiations took place or extended over a period of time or any time. Defendants further jointly and severally deny that any offer, "niggardly" or otherwise, was made and deny that they or either of them stated to plaintiff that in view of plaintiff's unwillingness to sell at defendant's price, one alternative, namely that of redeeming said mortgage remained and further deny that they or either of them then and there or at any time fixed the sum necessary for redemption or that they stated they would accept said sum or any sum.

(22) Answering the twenty-second paragraph of the bill of complaint defendants deny that on the 10th of November, 1919, they or either of them fixed any sum at which the plaintiff might redeem or that the plaintiff relied upon any said offer and these defendants further jointly and severally deny that plaintiff on the 10th of November, 1919, or at any time tendered the defendants any amount [fol. 25] of money whatsoever and deny that on said day they first informed plaintiff that they did not know as to his rights to redeem and deny that they advised plaintiff that they would take it up with their counsel and further deny that on the 19th of November any legal tender was made by plaintiff or any person in his behalf, pending consultation with their counsel in respect to plaintiff's right to redeem or at any other time, but on the contrary allege the fact to be that on or about the 19th of November, 1919, plaintiff did tender what purported to be a check as to the amount of which defendants have no knowledge; which check defendants refused.

(23) Answering the twenty-third paragraph of the bill of complaint defendants jointly and severally deny that subsequent to the 19th of November, 1919, they first advised plaintiff that he had lost his right to redeem and that they would not permit nor accept a redemption but on the contrary allege the fact to be that plaintiff's right to redeem expired on the 7th of February, 1919, and that the defendants so advised the plaintiff.

(24) Answering the twenty-fourth paragraph of the bill of complaint defendants jointly and severally deny that they were conspiring one with the other or in any manner to cheat and defraud the plaintiff out of his rights and deny that they believed the plaintiff to have any rights in said property after the 7th day of February, 1919. Defendants further deny that they sought deliberately or in any manner to

deceive the plaintiff with reference thereto or prolonged negotiations of any character with the plaintiff, but on the contrary allege the fact to be that they at all times believed and still believe that the plaintiff's right to redeem expired on the 7th day of February, 1919, and that [fol. 26] they at no time informed the plaintiff otherwise.

(25) Answering the twenty-fifth paragraph of the bill of complaint defendants deny that any offer to permit the plaintiff to redeem was made by them or either of them and further deny that each and every transaction conducted by the defendants in respect to said mortgage foreclosure and conversations had, and acts done subsequent thereto, was not made in good faith and further deny that they had any information or belief respecting plaintiff's financial condition or his ability to raise money and deny that any amount was fixed by defendants for redemption and further deny that any acts or conversation was in pursuance of any conspiracy and further deny that any conspiracy existed and further deny that fairness to plaintiff was only pretended, to cheat and defraud the plaintiff out of his rights in said property or to take advantage of plaintiff's financial situation due to his military service, but on the contrary allege the fact to be that the plaintiff was given every opportunity to redeem from said mortgage foreclosure that the plaintiff at all times was fairly and honestly dealt with by the defendants and each of them.

(26) Answering the twenty-sixth paragraph of the bill of complaint defendants jointly and severally deny that plaintiff relied in good faith upon the claim of defendants that they wish to consult counsel thereby allowing further time to elapse so that plaintiff would have no right whatsoever in the premises, but on the contrary allege the fact to be the plaintiff was at all times subsequent to the 7th day of February, 1919, advised that his rights to redeem had expired.

[fol. 27] (27) Answering the twenty-seventh paragraph of the bill of complaint defendants neither admit nor deny the allegations contained in this paragraph of said bill of complaint for want of knowledge in respect thereto and leave the plaintiff to his proof thereof.

(28) Answering the twenty-eighth paragraph of the bill of complaint defendants admit that the amount involved herein is upwards of the sum of One Hundred Dollars (\$100.00), but deny that at the time the lots were foreclosed they were worth Five Hundred (\$500.00) Dollars per lot, but on the contrary allege the truth and fact to be that at the time of said foreclosure sale, the value of said lots was barely sufficient to cover the amount of the mortgage, interest, taxes, assessments, and cost of foreclosure and further allege the truth and fact to be that the plaintiff knew that said lots were of small value and that the Plaintiff was indifferent as to his alleged interest in said lots at the time of said foreclosure and that after the period of redemption expired these lots unexpectedly became of greater value, due to the recent real estate activity in the section of the city where these lots are situated and that after the said increase

in value the plaintiff for the first time manifested his desire to be relieved from the legal foreclosure and to be permitted to redeem therefrom and these defendants further deny that the sale of said lots was not a fair one, on the contrary allege the fact to be that said sale was fair and that the sum of Two Hundred and Twenty Dollars (\$220) per lot at the time of said sale was a fair and reasonable price for said lots and these defendants further deny that the plaintiff should be protected from said sale.

[fol. 28] And further answering said bill of complaint these defendants deny that said plaintiff is entitled to the relief, or any part thereof, therein and thereby sought, and pray that said bill may be dismissed with their costs in this behalf sustained.

(Signed) Edmund L. Ebert, Andrew J. Keary, Ella R. Keary.
Elmer H. Groefsema, Attorney for Defendants.

Jurat showing the foregoing was duly sworn to by Ella R. Keary omitted in printing.

[fol. 29] Jurat showing the foregoing was duly sworn to by Edmund L. Ebert omitted in printing.

EXHIBIT A TO ANSWER

This mortgage, made the twenty-fifth day of September in the year one thousand nine hundred and sixteen.

Witnesseth, that Eddie A. Hulett and Nellie E. Hulett, his wife, of the City of Detroit, Wayne County, Michigan, mortgagors, mortgage and warrant to Andrew J. Keary and Ella R. Keary, his wife, of the Village of New Hudson, Oakland County, Michigan, mortgagees, their heirs and assigns, the parcels of land situated in the Township of Hamtramck in the County of Wayne and State of Michigan, described as follows, to-wit: Lots (30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49) thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, and forty, forty-one, forty-[fol. 30] two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight and forty-nine, in Sunnyside Subdivision of part of quarter section 1,10,000 Acre Tract, Hamtramck, according to the plat thereof as recorded December 31, 1892, in liber 18, page 2 of plats, Wayne County Records.

Together with the hereditaments and appurtenances thereof, to secure the payment of the principal sum of Four Thousand (\$4,000) Dollars, payable on or before one (1) year from date hereof, and interest thereon from date at the rate of 6 per cent per annum payable semi-annually, until the full payment of said principal sum, according to the terms of a certain note bearing even date herewith, executed by Eddie A. Hulett and Nettie E. Hulett, his wife, to said mortgagees, and will pay interest at the rate of — per cent per annum, semi-annually, upon all overdue interest and principal from the time of its or their maturity.

And it is hereby expressly agreed by and between the parties hereto, as a part hereof:

1st. That said mortgagors within thirty days from the time the same become due and payable, will pay all taxes and assessments which shall be levied or placed upon the said land.

2nd. That said mortgagors will, while the mortgage debt remains unpaid, keep all buildings upon the mortgaged premises insured against loss and damage by fire, by insurers, and in amount approved by mortgagees, with the insurance money, in case of loss, made payable in the policy thereof to the mortgagees or their assigns as their mortgage interest may appear, and deliver, as issued, to the mortgagees, to be kept by them all policies of such insurance, and pay on [fol. 31] their issue, the premium for the same.

3rd. That if the mortgagors make default in the payment of any of the aforesaid taxes, or assessments, or premiums as above covenanted and agreed, said mortgagees, or holder, of the mortgage may pay the same and that the sum or sums so paid shall, from the time of their payment, be due and payable hereon as part of the mortgage debt, with interest thereon at the rate of six (6) per cent per annum.

4th. That should default be made in the payment of any installment of principal maturing hereon, before the whole thereof becomes due, or of any installment of interest when the same becomes due and payable, or of any taxes or assessments or premiums for insurance, or any part thereof, when the same are payable as above provided, and should the same or any part thereof remain unpaid for the period of thirty days, then and from thenceforth, the aforesaid principal sum, with all arrearages of interest, shall at the option of said mortgagees, their legal representatives, or assigns, become due and be payable therefrom and thereafter although the period above limited for the payment of the same shall not then have expired, anything hereinbefore, or in said note contained to the contrary thereof in any wise notwithstanding.

5th. That upon default being made in the payment of principal or interest hereon, or of any part thereof, at the time the same becomes due and payable according to the terms thereof, the said mortgagees, their legal representatives or assigns, are hereby authorized [fol. 32] and empowered to grant, bargain and sell, release and convey the said premises, property and appurtenances at public vendue and to execute and deliver to the purchaser or purchasers at such sale good and sufficient deeds of conveyance in law, pursuant to the statute in such case made and provided, rendering any surplus moneys after payment of the moneys due hereon, the attorney fee provided by law, and the costs and charges of such vendue and sale, to the said mortgagors, their heirs, legal representatives and assigns.

If not in default on the mortgage, parties of the second part agree to release any one lot upon the payment to them of Two Hundred (\$200) Dollars and interest.

In witness whereof, the said mortgagors have hereunto set their hands and seals the day and year first above written.

Eddie A. Hulett, Nellie E. Hulett. Signed, sealed and delivered in presence of: Edward E. Hill, Edmund L. Ebert.

STATE OF MICHIGAN,
County of Wayne, ss:

Before me, the subscriber, a notary public in and for said county, this 25th day of September, A. D. 1916, personally appeared Eddie A. Hulett and Nellie E. Hulett, his wife, known to me to be the persons described in, and who executed the within mortgage, and [fol. 33] severally acknowledged the execution thereof to be their free act and deed.

Edmund L. Ebert, Notary Public, Wayne County, Mich.
My commission as notary public expires on the 19th day of September, 1919.

Mortgage Tax Certificate

No. 61475

Section 3, Act No. 91, P. A. 1911

Wayne County Treasurer

STATE OF MICHIGAN,
County of Wayne, ss:

September 27, 1916.

I hereby certify that the amount secured by this mortgage is \$4,000 and that I have received \$20.00 in full for the tax thereon.

Edward F. Stein, County Treasurer of Wayne County,
Michigan.

Book 14, Page 28, Line —.

[fol. 34]

EXHIBIT B TO ANSWER

Sheriff's Deed on Mortgage Sale

This indenture, made the fifth day of February, in the year of our Lord one thousand nine hundred and eighteen, between Otto C. Klanowsky, deputy sheriff in and for the County of Wayne, in the State of Michigan, of the first part, and Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, of the second part.

Witnesseth, that whereas Eddie A. Hulett and Nellie E. Hulett,

his wife, of the City of Detroit, Wayne County, Michigan, made a certain indenture of mortgage to Andrew J. Keary and Ella R. Keary, his wife, of the Village of New Hudson, Oakland County, Michigan, dated the twenty-fifth day of September, A. D. 1916, which mortgage was duly recorded in the office of the Register of Deeds in and for the County of Wayne, State of Michigan, in liber 795 of mortgages, on page 506, on September 27, 1916, which said indenture of mortgage contained a power of sale, which has become operative by reason of a default in a condition of said mortgage.

And whereas, by virtue of said power of sale, and in pursuance of the statute in such case made and provided (no proceedings at law having been instituted to recover the debt secured by said mortgage or any part thereof), a notice was duly published that the said premises in said indenture of mortgage described or so much thereof as might be necessary to pay the amount due upon said mortgage, [fol. 35] interest, or legal costs, etc., would be sold on the fifth day of February, in the year of our Lord one thousand nine hundred and eighteen, at twelve o'clock noon, Eastern Standard time, at the southerly or Congress street entrance to the Wayne County Building in the City of Detroit, Wayne County, Michigan, that being the place of holding the Circuit Court within said county in which the premises described in said mortgage are situated.

And whereas, in pursuance of said notice, I did, on the fifth day of February, in the year last aforesaid, at twelve o'clock (Eastern Standard Time) noon of said day, expose for sale at public vendue, the lands and tenements hereinafter particularly described, and on such sale did strike off and sell the said lands and tenements to Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, for the sum of one thousand seven hundred fifty-six and 64/100 (\$1,756.64) dollars, that being the highest bid therefor and the said Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, being the highest bidders; which said lands and tenements are described as follows, viz.: Premises situated in the Township of Hamtramck, in the County of Wayne and State of Michigan, described as follows, to-wit: Lots numbered thirty-two (32), thirty-five (35), thirty-seven (37) thirty-nine (39), forty-one (41), forty-three (43), forty-five (45), and forty-seven (47), all in Sunnyside subdivision of part of quarter section 1, 10,000 acre tract, Hamtramck, according to the plat thereof as recorded December 31, 1892, in liber 18, page 2 of Plats, Wayne County Records. [fol. 36] (Said above described lots were offered for sale in separate parcels and as such were sold by me for the sums of two hundred nineteen and 58/100 (\$219.58) dollars, each respectively, aggregating in all the aforesaid sum of one thousand seven hundred fifty-six and 64/100 dollars.)

Now, this indenture witnesseth, that I, Otto C. Klanowsky, deputy sheriff aforesaid, by virtue and in pursuance of the statute in such case made and provided, and in consideration of the said sum of money so paid as aforesaid, have granted, conveyed, bargained and sold, and by this deed do grant, convey, bargain and sell unto the

said Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, their heirs and assigns, forever, all the said lands and tenements hereinbefore described, with the appurtenances, and all the estate, right, title and interest which the said mortgagors had in the said lands and tenements, and every part thereof, on the twenty-fifth day of September, in the year of our Lord one thousand nine hundred and sixteen, that being the date of said mortgage, or at any time thereafter.

To have and to hold the said lands and tenements, and every part thereof, to the said Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, their heirs and assigns, forever, to their sole and only use, benefit and behoof forever, as fully and absolutely as I, Otto C. Klanowsky, Deputy Sheriff aforesaid, under the authority aforesaid, might, could or ought to sell the same.

[fol. 37] In witness whereof, I have hereunto set my hand and seal the day and year first above written.

Otto C. Klanowsky, Deputy Sheriff in and for the County of Wayne, Michigan. Signed, sealed and delivered in presence of: Arthur Hitchens, Robert W. Webb.

STATE OF MICHIGAN,

County of Wayne, ss:

On the fifth day of February, one thousand nine hundred and eighteen, before me, a notary public in and for said county, came Otto C. Klanowsky, deputy sheriff of said county, known to me to be the person described in and who executed the above conveyance and knowledge, that he executed the same for the intents and purposes therein named.

Robert W. Webb, Notary Public, Wayne County, Mich. My commission expires June 26, 1921.

[fol. 38]

Evidence of Sale

Eddie A. Hulett et al., S. R. Smith, Attorney, 309 Majestic Building

Mortgage Foreclosure

Whereas default has been made in the condition of a certain mortgage made by Eddie A. Hulett and Nellie E. Hulett, his wife, of the City of Detroit, Wayne County, Michigan, to Andrew J. Keary and Ella T. Keary, his wife, of the Village of New Hudson, Oakland County, Michigan, dated the twenty-fifth day of September, A. D. 1916, and recorded in the office of the Register of Deeds for Wayne County, Michigan, on September 27, A. D. 1916, in liber 795 of mortgages on page 506, on which mortgage there is claimed to be due at the date of this notice the sum of one thousand six hundred sixty-one and 37/100 (\$1,661.37) dollars, principal and interest; and more than thirty days' default having been made in the pay-

ment of the principal and interest, which became due and payable on September 25, 1917; and no suit or proceeding at law or in equity having been instituted to recover the money secured by said mortgage or any part thereof, now therefore, by virtue of the power of sale contained in said mortgage and of the statute in such case made and provided, notice is hereby given that on Tuesday, the fifth day of February, A. D. 1918, at twelve o'clock, noon, Eastern Standard Time, the undersigned will at the southerly or Congress street entrance to the Wayne County Building, in the City of Detroit, Wayne County, Michigan (that being the place where the Circuit Court for the County of Wayne, Michigan, is held) sell at [fol. 39] public auction to the highest bidder, the premises described in said mortgage or so much thereof as may be necessary to pay the amount due, as aforesaid, upon said mortgage, with seven (7) per cent interest and all legal costs and charges provided in said mortgage and allowed by law, including an attorney fee, the premises situated in the Township of Hamtramck, in the County of Wayne and State of Michigan, described as follows, to-wit: lots numbered thirty-two (32), thirty-five (35), thirty-seven (37), thirty-nine (39), forty-one (41), forty-three (43), forty-five (45), and forty-seven (47), all in Sunnyside subdivision of part of quarter section 1, 10,000 acre tract, Hamtramck, according to the plat thereof as recorded December 31, 1892, in liber 18, page 2 of plats, Wayne County Records.

Dated at Detroit, Michigan, November 8th, A. D. 1917.

(Signed) Andrew J. Keary, Ella R. Keary, Mortgagees.
S. R. Smith, Attorney for Mortgagees, 309 Majestic Building, Detroit, Michigan.

STATE OF MICHIGAN,
County of Wayne, ss:

Nelson L. Korte, being duly sworn, deposes and says the annexed printed copy of a notice was taken from the Detroit Legal News, a newspaper printed and circulated in said state and county and that said notice was published in said newspaper on the 10th, 17th and 24th of November, 1st, 8th, 15th, 22nd and 29th of December, 1917, [fol. 40] 5th, 12th, 19th and 26th of January and 2nd of February, A. D. 1918, that he is the principal clerk of the printers of said newspaper, and knows well the facts stated herein.

Nelson L. Korte.

Subscribed and sworn to before me this second day of February, A. D. 1918. H. A. Wright, Notary Public in and for said County. My commission expires July 30, 1920.

Printer's Bill

5 folios 13 times.....	\$24.50
Affidavit of Publication.....	.25

\$24.75

Received Payment. Detroit Legal News, per ———

STATE OF MICHIGAN,
County of Wayne, ss:

Otto C. Klanowsky, being duly sworn, deposes and says that he is deputy sheriff of said County of Wayne, State of Michigan, that he acted as auctioneer and made the sale as described in the annexed deed pursuant to the foregoing printed notice; that the sale was opened at twelve o'clock (Eastern Standard Time) noon of the fifth day of February, A. D. 1918, at the southerly or Congress street entrance to the Wayne County Building, Detroit, Michigan, that being the place of holding the circuit court in the said County of [fol. 41] Wayne, State of Michigan, and was kept open for the space of one (1) hour, that the highest bid for said lands and tenements was the sum of one thousand seven hundred fifty-six and 64/100 dollars, made by Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, and that the sale was in all respects open and fair, and this deponent did strike off and sell the said lands and premises to the said Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, who purchased the said premises fairly, and in good faith, as deponent verily believes.

Otto C. Klanowsky.

Subscribed and sworn to before me this fifth day of February, A. D. 1918. Robert W. Webb, Notary Public, Wayne County, Mich. My commission expires June 26, 1921.

STATE OF MICHIGAN,
County of Wayne, ss:

I do hereby certify that the within mortgage deed will become operative at the expiration of one year from the fifth day of February, A. D. 1918, unless otherwise redeemed according to law in such case made and provided.

Otto C. Klanowsky, Deputy Sheriff.

[fol. 42] CIRCUIT COURT FOR COUNTY OF WAYNE

[Title omitted]

Case on Appeal

The above entitled cause came on for hearing before Hon. Arthur Webster, Wayne Circuit Judge, on Friday, the 18th day of March, 1921, Messrs. Cohane, Rhodes, Garvett & Frankel appearing as attorneys for plaintiff and Mr. Elmer H. Groefsema, with Thomas J. Bresnahan as counsel, for defendants.

The following testimony was taken and proceedings had:

KEARY, ANDREW J., being duly sworn as a witness in behalf of the plaintiff called for cross-examination under the statute, testified as follows:

Cross-examination.

By Mr. Cohane:

My full name is Andrew J. Keary, and I am one of the defendants in this case. I live in Highland Park; I have no office in the City of [fol. 43] Detroit, nor did I have one during 1917, 1918, 1919 or 1920. I am not related to Mr. Edmund L. Ebert, nor have I at any time had an office together with him. Mr. Edmund L. Ebert conducts business for me, and has been doing so for probably ten years. He invests my money for me.

Q. I will ask you whether or not Mr. Edmund L. Ebert for you invested your money in this mortgage on lots in Sunnyside Subdivision in issue or in controversy in this case?

A. He did, subject to my confirmation.

Q. Now I will ask you whether or not Mr. Ebert was authorized by you to conduct your affairs in connection with a mortgage on these lots?

A. Yes, sir.

Q. With the full understanding of your affairs, you had confidence in and had given authority to him to conduct the matter for you?

A. Well, his actions was subject to my confirmation.

Q. I will ask you whether or not you were advised from time to time in the ordinary course of your affairs, what business Mr. Ebert was transacting for you in connection with these lots on this subdivision?

A. Yes, sir.

I could not give the date from memory when I first knew that Doctor H. P. Poston was the owner of these eight lots subject to the mortgage. There was somebody came in Mr. Ebert's office and told him that he was in the service, I don't remember who it was. It might have been Mr. Warren. That was the first time I knew that the doctor was in the military service.

Q. Did you yourself personally have any dealings with Dr. Poston previous to his entering military service?

[fol. 44] A. I never saw him.

Q. I will ask you whether or not you had authorized Mr. Ebert to conduct that end of the matter for you?

A. Well, what do you refer to?

Q. Well, who was authorized to collect interest on this mortgage?

A. Mr. Ebert.

Q. Mr. Ebert collected the interest for you?

A. He was authorized.

Q. Who was authorized to secure payment of mortgages which were due you as they became due?

A. Mr. Ebert.

Q. Mr. Ebert. And he was authorized in this case to collect this money for you?

A. Yes, sir.

Q. And receipt for it?

A. Yes, sir.

Q. And to collect the interest on this mortgage and receipt for it as it became due and to take such other measures as he might deem necessary to protect your interests?

A. Any other measures that were necessary that he considered necessary, he always consulted me, subject to my consent.

I think it was I, and not Mr. Ebert who had a talk with Dr. Poston on the telephone notifying him when the mortgage became due. I could not say how long it was before the mortgage became due. I do not know the date when I first learned that the doctor was in the military service. It was the date Mr. Warren called at the office. I don't remember the date.

Q. Did you know after the doctor had returned from the military [fol. 45] service that Dr. Poston and Mr. Ebert had up the matter of this mortgage foreclosure?

A. What is the question please?

(Question read by the reporter.)

A. I knew there was talk about it, yes.

Q. I will ask you whether or not Mr. Ebert was authorized by you to conduct the negotiations with Dr. Poston for you with reference to this mortgage foreclosure?

A. Mr. Ebert negotiated and then submitted the question to me. That was the habit.

Q. I will ask you whether or not you had authorized him to negotiate for you?

A. You mean for collecting the rent or collecting—

Q. No, negotiate with reference to this mortgage foreclosure and the claim of the doctor that it could not become absolute because he was entitled to credit for the time he was in the military service, a further extension under the mortgage moratorium law?

A. I did not authorize him to do that.

Q. Did you know that he was doing it?

A. Negotiating?

Q. Negotiating with reference to it?

A. There was a good deal of talk back and forth.

Q. Did you know that he was doing that?

A. Yes, I knew it.

Q. It was with your permission and authority that he was doing so?

A. Yes, when the matter was brought up he submitted it to me.

Q. Yes, did you at any time authorize Mr. Ebert to negotiate with the doctor at a price for which he would sell these lots to you?

[fol. 46] A. I don't think so.

Q. Did you at any time—pardon me?

A. No, I didn't negotiate.

Q. Did you at any time agree that you would accept the amount of the mortgage with interest and costs at any time after May 14, 1919?

A. No, sir.

Q. Did you at any time agree with Dr. Poston that you would accept the mortgage, interest and costs and expenses to date and give a discharge of the mortgage?

A. No, sir.

Q. Did you at any time authorize Mr. Ebert to do that for you?

A. No, sir.

Q. If I understand correctly you say that you at no time ever authorized Mr. Ebert to accept the mortgage principal and interests, costs and expenses?

A. No, sir.

Q. And give a discharge of the mortgage, you at no time yourself offered to do that?

A. No time, no, sir, I did not.

Q. There is no question about your understanding exactly what I said, and that answer stands.

A. Repeat the question again please?

(Question read by the reporter.)

Q. Is that right?

A. That is correct.

Q. You want to stand by that answer?

A. Yes, sir.

I kept a book showing a record of this mortgage, and the interest and costs that I had in the matter. I recall making a computation of it on or about July 24, 1919.

[fol. 47] Q. I will ask you whether or not you recall computing the principal as of November 8, 1917, \$1,661.37?

A. I could not give you the amount from memory.

I have not that memorandum with me. I cannot remember whether or not, I computed the figures of interest to August 5th, 1919, as \$28.02, sheriff's fees \$3.00, Register of Deeds at \$2.50, tax stamp \$2.00, legal news \$24.75, attorney's fees \$35.00, as being due February 5th, 1919, \$1,756.54, interest to February 5th, 1919, \$122.96, total \$1,879.50. Interest to August 5, 1919, \$65.79. Due August 5, 1919, \$1,945.39. That is probably correct though I would not dispute them.

Q. I will ask you whether or not you recall making that computation, which you state is probably correct, for the purpose of advising the doctor that that was the amount that was due to August 5, 1919, and you were willing to accept that in order to discharge this mortgage?

A. I did not.

Q. You did not? You recall making a computation in substance like that on or about July 24, 1919?

A. I have no doubt I did. I do not recall it.

Q. As a matter of fact, didn't you make that computation for the purpose of sending it to the doctor and telling him that was the amount necessary to be paid to you in order to redeem this mortgage?

A. I made that computation to show how much I had in the

property at that time up to that date, how much I had invested in the property at that date.

Q. Didn't you send it to him in order that he might know the amount you expected him to pay before you would release him from the mortgage?

[fol. 48] A. I sent that for the purpose of telling him how much I had invested in the property.

Q. Do you recall whether or not you told him, whether or not you wrote him a letter on or about July 24, 1919?

A. I have no recollection of writing the doctor a letter.

Q. You have no recollection of sending it to him in the form of a letter?

A. No, sir. I could almost say I did not. I have no recollection.

Q. Well do you remember whether or not on or about July 24, 1919, Mr. Ebert told you that Dr. Poston wanted to pay up this mortgage and wanted you to figure up how much the amount was that he would have to pay?

A. Mr. Ebert told me—

Q. On or about July 24, 1919?

A. I don't know when it was, I would not say, some time, he told me that you, I think you were the man that asked for the amount I had invested in that property, and I gave that statement, I sent a statement to somebody, to you I presume.

Q. Do you recall whether or not with that statement you sent a letter?

A. I have no—I sent no letter that I recollect.

Q. In order to refresh your recollection, do you recall whether or not you wrote a letter and signed your name, with the computation, on or about July 24, 1919, stating that the amount due was \$1,945.39 and that you would accept that in order to release him from this mortgage?

[fol. 49] A. No, I didn't say I would accept that, I never said so. What we did say and all that was said from beginning to end was if the doctor could show he had any rights there, we would accept it, if the doctor could show he had any rights in that property we would accept it. We did not write it, however.

Q. I will ask you whether or not he did not show that to your satisfaction?

A. He did not.

Q. I ask you whether or not because of the fact he had shown it to your satisfaction, you wrote the letter?

A. I never wrote the letter.

Q. Never wrote a letter?

A. No, sir.

I wish you to understand that I at no time fixed any amount that I would accept to redeem this mortgage.

Q. I ask you whether or not you recall in November, 1919, making a computation as to how much money would be accepted by you to redeem from this mortgage?

A. I might have made the computation.

I don't remember in 1919 Mr. Ebert taking up with me an offer of Dr. Poston to pay off the amount of the mortgage debt and interest and costs in order to redeem from the mortgage debt and interest and costs in order to redeem from the mortgage, and whether or not on that basis I made a computation as to how much it was.

Q. Do you recall during a period of how many months these negotiations went on in your behalf between Dr. Poston and Mr. Ebert, with reference to these lots?

A. Well, I could not state the time.

It was several months, I don't know just how many I do not recall whether or not it was six or seven months.

[fol. 50] Q. Am I to understand you that your recollection is not very clear as to this transaction during that period?

A. Yes, you may understand that.

I was not present at the sale of these lots held on February 5th, 1918, but I had somebody present at this mortgage foreclosure sale representing me. Probably it was Mr. Edmund L. Ebert. I authorized him to buy in the property for me at that sale, I do not recall the price at which I bought it in. I do recall that I bought it in at exactly the same amount as was calculated was covered by my principal, interest, costs and expenses on account of this mortgage. I got a deed from the sheriff. It is not in my name at this time. I sold it on December 19th, 1919, to Mr. Edmund L. Ebert, one of the defendants in this case for \$325 a lot.

Q. What was the date of the mortgage foreclosure, what was the date at which you received your deed, after a year from the time of sale, February 5th, 1920?

A. I don't know when the deed was recorded.

Q. When did you get it?

A. The redemption period expired February 5, 1918.

Q. February 5, 1918?

A. Yes, it was sold on that day.

Q. Was it sold on that date?

A. No, it was sold February 5, 1918.

Q. So that the redemption period would not expire until February 5, 1919?

A. February 5, 1919.

Q. As a matter of fact, didn't you make that computation for the purpose of sending it to the doctor and telling him that was the amount necessary to be paid to you in order to redeem this mortgage?

[fol. 51] A. I made that computation to show how much I had in the property at that time up to that date, how much I had invested in the property at that date.

Q. Didn't you send it to him in order that he might know the amount you expected him to pay before you would release him from the mortgage?

A. I sent that for the purpose of telling him how much I had invested in the property.

Q. Do you recall whether or not you told him—whether or not you wrote him a letter on or about July 24, 1919?

A. I have no recollection of writing the doctor a letter.

Q. You have no recollection of sending it to him in the form of a letter?

A. No, sir. I could almost say I did not. I have no recollection. I never wrote the letter.

Q. Now, then you wish me to understand that you at no time fixed any amount that you would accept to redeem this mortgage?

A. No.

Q. I ask you whether or not you recall in November, 1919, making a computation as to how much money you would accept to redeem from this mortgage?

A. I might have made the computation.

Q. I will ask you whether or not you recall the amount that you fixed in November, 1919, to redeem from the mortgage \$1,735.93?

A. I don't remember the figures, no. If I made any I don't remember.

Q. Do you recall during a period of how many months these negotiations went on in your behalf between Dr. Poston and Mr. [fol. 52] Ebert, with reference to these lots?

A. Well, I could not state the time. It was several months, I don't know just how many.

Q. It was a number of months?

A. I would think so.

Q. Do you recall whether or not it was about 6 or 7 months?

A. No, I would not think that long.

Q. Well, 5 or 6 months?

A. Probably 2 or 3, possibly.

Q. About three months?

A. Possibly, I don't know, I would not state, I don't know, I made no record of it, I did not try to remember it.

Q. It extended over quite a period of time did it not, Mr. Keary?

A. Well, some time, I don't know how much time. I remember the mortgage foreclosure sale on February 5th, 1918. I was not there myself, but I had Mr. Ebert there, whom I authorized to buy the lots for me. I bought them in at exactly the same amount as I calculated was covered by my principal, interest, costs and expenses on account of this mortgage. I have a deed from the sheriff, but I do not own the property today as I sold it December 19th, 1919, to Mr. Edmund L. Ebert, one of the defendants in this case for \$325.00 a lot.

Q. I will ask you whether or not you have been using Mr. Ebert's office as your headquarters for the receiving of mail, and the transaction of your business?

A. I have not for the receiving of mail. I transact business there. [fol. 53] Q. How many properties does Mr. Ebert handle for you?

A. I don't know.

Q. Approximately?

A. I could not answer.

Q. At that time, approximately how many was he handling for you?

A. You mean real estate property?

Q. Yes.

A. None whatever.

Q. Outside of that mortgage, none?

A. Well, he handled mortgages but not real estate.

Q. Only that particular mortgage?

A. Oh, no, he handled other mortgages.

Q. How many?

A. I could not say, there might be possibly 50, I don't know.

Q. About 50?

A. Possibly, I would not say.

Q. About how much money would those 50 mortgages represent?

A. I could not give you any idea of the different amounts.

Q. Would it be 60 or 70 thousand dollars?

A. I don't know.

Q. This money of yours was loaned out by Ebert for you, and the mortgages were in your name?

A. Yes, sir.

Q. And the collection of interest and the handling of the mortgages, and the placing of them for you was done by Mr. Ebert?

[fol. 54] A. The placing of the mortgage? Mr. Ebert has authority to collect the interest and negotiate the loans subject to my confirmation.

Q. Has he written power of attorney from you?

A. No, sir.

Q. Are you willing at this time to accept the principal of the mortgage, together with interest, costs and expenses to this date for this property?

A. We have always been willing to accept it if the doctor could show that he had a legal right there.

The Court: I didn't understand that.

A. We have always been willing to accept if the doctor can show that he has a legal right to the property. We never refused it. Those have been my instructions to Mr. Ebert.

Q. To Mr. Ebert?

A. Yes, sir.

I have not yet recognized the doctor's legal right to redeem this mortgage, nor have I at any time before. That is all we asked, was for him to show where his rights are. I am waiting to be convinced of that. I suppose I knew at the time about the doctor's offer to Mr. Ebert in November of 1918 of \$1,753—odd dollars by a certified check. I understood he had an offer.

POSTON, DR. HARRY P., called to the stand in his own behalf, testified as follows:

Direct examination:

By Mr. Cohane:

A. My full name is Dr. Harry P. Poston, and I live in the City [fol. 55] of Detroit, and practice medicine in the City of Detroit, and my offices are at 1337 David Whitney Building. I have been practicing medicine in the City of Detroit since about December, 1916. I am a graduate of Washington University, and also of Johns Hopkins. I purchased the lots in question in May of 1917, and Exhibit 1 is a deed to me of this property from Hulett and wife subject to a real estate mortgage in the sum of \$200 on each lot or parcel of land aforesaid, which I agreed to assume and pay. It is the usual short form of printed warranty deed filled in.

(Exhibit 1 offered and received in evidence.)

I paid \$450 a lot subject to the mortgage, for the 8 lots. I subsequently sold one of them. Paper marked Exhibit 2 is the mortgage covering this property (offered and received in evidence without objections). Exhibit 3 is my certificate of discharge from the military service showing the time that I entered the service and when I was discharged.

(Exhibit 3 offered and received in evidence without objections.)

(A letter is marked Exhibit 4.)

Q. I show you a paper marked Exhibit 4 and ask you whether or not you received that through the mail?

A. Yes, sir.

Q. Exhibit 4 offered and received in evidence without objections, is a letter on the letterhead of Edmund L. Ebert, real estate broker, 308 Majestic Building, dated September 6, 1918, to Dr. H. P. Poston, Detroit, advising of the mortgage becoming due.

A. Soon after receiving this letter I telephone to Mr. Ebert and told him I was unable to pay it because I was about to enter the military service.

Q. What was his response?

[fol. 56] A. That they wanted the money.

Q. What?

A. That the interest would not do, that they wanted the money.

Q. What else, if anything, did he say?

A. That is all.

Q. He said the interest would not do, he wanted the money?

A. Yes sir.

No other payment of this mortgage was ever demanded of me, nor did I ever receive any notice of the mortgage or of the mortgage foreclosure sale, nor was I advised that the mortgage sale was to be held. Before I entered the military service I consulted with Attorney Charles L. Bartlett with reference to the mortgage.

Q. What were you told?

Mr. Bresnahan: I object to that.

The Court: How is that material?

Mr. Cohane: That is material, for the purpose of showing that he advised with and depended upon the advice of counsel as to what he supposed his rights were.

The Court: How is that binding upon the defendant?

Mr. Cohane: It is not binding except for the purpose of showing that he acted on belief as what his rights were from what his counsel stated to him, as to his rights?

The Court: I will exclude it at the present time. I do not see how it is material at all.

I left the military service May 14th, 1919. After I returned from the service I saw Mr. Ebert. I was discharged at Hoboken, and arrived at Detroit about a week later. I was on my way through to [fol. 57] Kansas City from where I returned to Detroit in the latter part of July, and had a talk with Mr. Ebert in his office. Mr. Wm. W. Warren was also present.

Q. I will ask you what the conversation was that you had with Mr. Ebert at that time?

A. We went in to see about these lots and how to get the matter settled up. Well, we began negotiations for the—he asked me what I would take for the lots, set a price on them. I said that I would have to investigate, which I did, and I set a price. I investigated the lots and found that they were worth from \$600 to \$700, information obtained locally.

Q. Then what did you do?

A. Went in to see him and he said that was very much too high, he could not consider that. He would have to talk it over with Mr. Keary, or he would talk it over with Mr. Keary and then give me an answer.

Q. Did you get an answer?

A. Eventually I got an answer. Some two or three weeks later.

Q. What answer did he give you?

A. That Mr. Keary could not consider the lots at that price, if I would have a lower figure——

Q. Where did this conversation take place with Mr. Ebert?

A. It was either on the telephone or in the office, I don't recall exactly.

Q. What conversation, tell the balance of the conversation, if any, or any other conversation?

A. I made a price then of approximately \$500 that was to be put up to Mr. Keary.

Q. Who said that was to be put up to him?

A. Mr. Ebert.

[fol. 58] Q. When next, how long later did you hear from Mr. Ebert or Keary, or did you see them?

A. Well, it was some time later——

Q. What is some time?

A. I think in about September.

Q. What answer did you get?

A. I got an answer that that was too much.

Q. What was too much?

A. The price of \$500.00.

Q. Go ahead.

A. So then later——

Q. How much later?

A. About November, some time in November I asked them what they would do, what they would offer me. They said about \$400, and for me to pay the sidewalk taxes, sewers, etc., bringing it down to approximately, say \$300 or \$325.

Q. What was your answer?

A. I told them that I would pay up the mortgage and asked them the amount.

Q. Who were you talking to then?

A. Mr. Ebert.

Q. Where was this?

A. At the time I told them I would arrange to get the money?

Q. Where did this take place?

A. In Mr. Ebert's office.

Q. What was his answer?

A. He says all right. He says we don't want the lots. We want the money.

Q. He didn't want the lots, he wanted the money?

A. Yes, sir.

[fol. 59] Q. What money?

A. The mortgage and interest. So I told him I would arrange to get it and I borrowed the money.

Q. Who did you borrow it from?

A. From Dr. George Renaud.

Q. Dr. George Renaud. How much did you borrow?

A. I think I borrowed \$1,500 from him.

Q. Did you have any other money of your own?

A. I had a little.

Exhibit 5 is my certified check for \$1,735.93.

Q. How did you arrive at the amount of that?

A. The day I went to get the certified check I called Mr. Ebert up on the telephone. He gave me the exact amount.

Q. What amount did he give you?

A. The amount stated in the check there.

Q. What did he tell you that amount was?

A. That that was the amount it would take to redeem the lots.

Q. That was the amount it would take to redeem the lots. From what?

A. From the mortgage.

Q. The one in question in this case?

A. Yes, sir.

Q. All right. After you got the certified check, what did you do?

A. I took it down. Oh, he said, you will have to bring in the army discharge, I would have to bring in the army discharge, so I got that, I took it down. They said they did not think I had any rights in the matter, the time had expired.

[fol. 60] Q. And what was it Mr. Ebert said with reference to this army discharge?

A. They wanted to see my army discharge, see when I was in the service, if I was entitled.

Q. Had any question ever been raised before that time as to whether or not you had been in the service?

A. Never.

Q. Had any question been raised before that time as to your right to redeem from the sale of these lots?

A. No.

Q. By Ebert or Keary?

A. No, sir.

Q. Had there been anything else said or done by Ebert or Keary contesting your title to these lots outside of agreeing with you on the amount that it would take to redeem it?

A. No.

After that I consulted with you and Mr. Bartlett.

Q. What further negotiations or dealings did you then have with either Ebert or Keary?

A. I don't think I had any more personally.

Exhibit 6 is the certified check dated January 13th, 1920 in the sum of \$1,850.00 which I presented to the Register of Deeds with \$200 in cash, telling him that I presented and offered that for the purpose of redeeming the lots in question in this case from the mortgage by paying the mortgage and interest, etc. I had my army papers with me at that time, and I exhibited them to him. The Register of Deeds refused this offer, and advised me to see Mr. Allen P. Cox, the Chief Assistant Prosecuting Attorney of Wayne County.

When I entered the military service, outside of these lots I had [fol. 61] a small equity in a house worth less than a thousand dollars. I owed money to Dr. Renaud, and outside of that about \$2,000 to a bank down south in the town of Bonne Terre, Mo. The Peoples Bank of Bonne Terre. I had no other financial resources of any kind. I had other obligations in the way of heavy life insurance, and wife and children. My life insurance premiums would come to \$2,000 about, annually. I was married in December, 1910, and had one child born in 1911. I had no resources for the support of my wife and child while I was in the service outside of my income from my pay in the army. I was discharged from the army May 14th, 1919.

Q. At that time did you have any resources with which to pay the mortgage on this property outside of your interest in the property itself?

A. I did not.

Q. I will ask you how much you owed at that time?

A. Well, approximately the sum that I did when I went in, a little more.

Q. How were your wife and child supported during the time you were in the service?

A. From my pay.

When I returned from the military service I could not get back into an office until September of 1919, because an office could not

be found, although I searched everywhere, then I only found an office by doubling up with another doctor in my old office at 1337 David Whitney Building. The other doctors in the suite are Dr. Herman Sanderson, Dr. Herbert Rich, Dr. Frederick Kidner, Dr. Frank Witter, Dr. Albert Catherwood, Dr. George Irvine, and myself. I doubled up with Dr. Catherwood.

[fol. 62] Q. Now Doctor, I will ask you whether or not, if you had been advised by either Ebert or Keary immediately after you returned from the military service that they would insist that their mortgage foreclosure would stand as a matter of law against any title of yours, would you have, and would you have been able to borrow the money at that time with which to pay pay them off?

A. If I had been so advised I could have.

Q. Why didn't you borrow it and pay them off?

A. Because with them I had negotiations which I expected to settle up by them buying the lots and deducting the mortgage and costs and everything.

I was born in Missouri in 1884. My people's lineage goes back in this country to 1650.

Q. What, if any connection did they have with the history of this country?

The Court: You need not go into that.

Mr. Cohane: I want to offer in evidence, your honor, all of the matters set forth and stated in paragraph ten, with reference to the family history.

The Court: How does that affect the moratorium law, how does that apply?

Mr. Cohane: Paragraph Ten, as a matter of the equities.

Mr. Cohane: I want to offer this for the purpose of showing this is just one of the kind of cases that the moratorium law was intended to protect against.

The Court: I will take an answer. We are in a Chancery proceeding.

Q. When did you first learn that this mortgage had been foreclosed?

[fol. 63] A. I was written to by Mr. Warren while in the service.

I am at this time ready and able and willing to pay both the amount due Keary and wife on the mortgage with costs and expenses on these lots, and I have been for some time.

Cross-examination.

By Mr. Groefsema:

I did not know the Hulets prior to obtaining the title by deed from them, when I met them for the first time. This was the first venture I made in the purchase and sale of real estate in the City of Detroit. I had never been engaged in those kind of transactions before. My training was along the medical line entirely technical, entirely professional and I had no business experience.

Q. Now at the time, Doctor, that you had title to these lots, you were aware of the fact that there was a mortgage on them, were you not?

A. I was not exactly at the time, because the way I got into these things, there was a lawyer friend of mine, and a builder and myself. They were going to do the building, I put in the money to buy these lots first, that is the first seven of them or eight, they expected to build on them and sell them in a short time, that is the way I got into the venture. When I entered the military service, I was aware that the mortgage was past due.

Q. You knew also that the mortgagees wanted their money?

[fol. 64] A. I knew that they wanted it, yes because I had talked with them.

Q. You knew what would happen, or what they might do in case they were not paid?

A. Well I realized that they could, that that would happen, but I was advised that I had a certain period of time still.

Q. Now this mortgage sale took place either while you were in the City of Detroit—

A. I was here at the time, I did not know anything about it at the time. Before the mortgage became due, I received a letter from Mr. Ebert.

Q. And you had had legal advice prior to the time this mortgage sale took place, hadn't you?

A. Yes.

Q. Respecting the rights of the mortgagees to foreclose?

A. Yes, in a general way I did.

Q. At the time you acquired those lots, that is, acquired the title to them, it was vacant property?

A. It was.

Q. What were the improvements?

A. They had sidewalks I think.

Q. They had sidewalks at that time?

A. Sidewalks, but no road.

Q. Had the sidewalks been paid for?

A. I think not.

Q. Do you know who paid for them?

A. I do not.

Q. Was there any improvement—

A. I beg pardon, there were not sidewalks at that time.

[fol. 65] Q. There was no water and no sewer?

A. No water or sewer.

Q. No improvement of any kind, just a piece of vacant property on the outskirts of the city?

A. (No answer.)

Q. You bought them as I understand it for the purpose of speculation?

A. Naturally.

Q. And at the time that you entered the service, real estate in the City of Detroit depreciated considerable in value, especially vacant property?

A. Yes.

Q. Was there any other demand made in any other form?

A. No, sir, there was not.

Q. Now Doctor Poston, at the time this foreclosure mortgage sale was had, some time in 1918, these lots were worth \$200 apiece?

A. They were never worth less than \$500.

I conveyed these lots to Doctor Catherwood, my associate, by quit claim deed which was recorded, and on the same day I received back from him a quit claim deed. I own those lots now. This was done on advice of counsel in order to have this quit claim deed with the notification in it that the title was not clear of record. That was merely for the purpose of getting this question of military record and right to redeem the mortgage of record in the register of deeds.

Q. You had several conversations on the phone with Mr. Ebert to the effect, that is before you went into the service, to the effect that he wanted his money or the mortgagee wanted his money?

A. He called up several times, yes.

[fol. 66] Q. Called up several times, and told you that the interest was not enough, that he wanted the payment on the principal?

A. Yes.

Q. Was that demand for the payment insistent, doctor, that is, was it unconditional?

A. No, sir.

Q. What pay, Doctor, were you receiving while in the army?

A. \$166.00 a month and commutation. My office expenses stopped. I had to give up my lease.

Q. You testified you were paying premiums on life insurance policies, and the premiums amounted to \$2,000.00, Doctor, is that right?

A. Between \$1,500 and \$2,000, it was.

Q. How long had these life insurance policies been running?

A. Over a period of ten or twelve years.

Q. Were those endowment or straight life or what kind, Doctor, generally speaking?

A. Endowment, 20-payment, ordinary life, and term.

Q. What was the cash surrender value at the time you returned from service, Doctor, of all those insurance policies?

A. I don't know, because I had borrowed on them.

Q. You had already borrowed on them?

A. Yes, sir.

A. Yes, sir. I borrowed on them before I went into service to buy those lots.

[fol. 67] Redirect examination.

By Mr. Cohane:

I practiced medicine in Detroit for 22 months prior to entering the service. I had graduated in 1907, and took a post graduate course

in a hospital for several years as a physician. Paper marked Exhibit 7 is a quit claim deed from myself to Doctor Catherwood, and Exhibit 8 is a quit claim deed back to me from the Doctor. Exhibits 7 and 8 offered and received in evidence. Exhibit 7 contains the statement: "Hereby there is conveyed the right and interest of first party to redeem the property aforesaid as conveyed by sheriff's deed, dated February 6, 1918, recorded February 7, 1918, in liber 1032 of deeds on page 526 in the office of the register of deeds for Wayne County, Michigan, said rights to redemption still subsisting in said first party by reason of his having been in the military service during the time when otherwise his right to redemption would have been foreclosed by the lapse of time." Exhibits 9 and 10 are receipts for City taxes paid on these lots by me for 1919, and paid by me on August 6th, 1919. I paid \$49.14 on one, and \$42.84 on the other.

BARTLETT, CHARLES L., called on behalf of the plaintiff testified as follows:

Direct examination.

By Mr. Cohane:

My name is Charles L. Bartlett. I am a lawyer and have been practicing my profession for 24 years in the City of Detroit and [fol. 68] my offices are at 515-516 Hammond Building. Dr. Harry P. Poston, the plaintiff in this case is a client of mine. I know Mr. Edmund L. Ebert, defendant in this case, and I was in his office in connection with Dr. Poston's affairs about a year and a half ago. Exhibit 5 is a check dated November 19th, 1919, and looks like the check that was tendered Mr. Ebert when you and myself were at his office on that date. The certified check was offered Mr. Ebert by you, I believe, or by myself and a demand was made for the contract on the property.

Q. What was Mr. Ebert's answer?

A. We could not get a definite answer out of him.

Q. Do you recall whether or not there was a mortgage against this property; which we were asking a discharge for?

A. Yes, I believe there was.

Q. Did Mr. Ebert accept the tender?

A. He did not.

Q. Do you know anything else about this transaction?

A. No, sir, except that I called Mr. Ebert, I believe, by telephone, in the presence of Mr. Warren later. Mr. Ebert refused the tender, on the same day of the issuance of the check.

Cross-examination.

By Mr. Groefsmā:

Q. Just you and Mr. Cohane and Mr. Ebert were the only persons present?

A. I think so, yes.

Q. In Mr. Ebert's office?

[fol. 69] A. Mr. Ebert's office, yes.

Q. Was there any other conversation in the nature of a threat made at that time in case Mr. Ebert would not take the check, that you recall?

A. What do you mean by threat?

Q. A threat by Mr. Bartlett, in the sense of a penalty that would be imposed upon Mr. Ebert in case he refused to take the check.

A. No, I could not say that.

Q. Do you recall whether anything was said about pressure that would be brought to bear upon Mr. Ebert by the American Legion or any other organization in case he refused to accept this check?

A. No, I do not.

Q. Do you remember making a statement to Mr. Ebert unless he accepted this check he would be run out of town, or words to that effect?

A. No, I never made any such statement as that.

Q. And that Mr. Keary would suffer the same fate in case he did not accept it, in his behalf?

A. I never heard of Mr. Keary until this moment, I never saw him before.

Q. Had not the Doctor been to see you about his legal rights in this matter?

A. Yes he had been to see me.

[fol. 70] WARREN, MR. WILLIAM W., sworn in behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Cohane:

My name is William W. Warren, and I am General Agent for the National Life Insurance Company, with offices at 433 Majestic Building. I know Mr. Ebert and met him in his office with Dr. Poston somewhere about September, 1919, subsequent to the Doctor returning from service. A day or so after the Doctor entered the military service I went to see Mr. Keary, and he told me that the property had been disposed of to Mr. Ebert. I said who is Mr. Ebert. He says, he is right here, and he goes around the corner of the office or the next adjoining office to his and brings Mr. Ebert in, in the same suite. I then wrote to Dr. Poston and told the Doctor of the circumstances of my visit to Mr. Keary's office and meeting Keary and Ebert and what they said. That was the first time I think that the Doctor knew that the mortgage had been sold or foreclosed, which had happened a good many months before that. Subsequently, in September 1919, I was in Mr. Ebert's office with Dr. Poston.

Q. What took place at that time?

A. The proposition was of Mr. Ebert's making a settlement with the doctor. I can't recall clearly the exact conversation, but the Doctor told Mr. Ebert what he would take for the lots, and Mr. Ebert substantially said it was too much, however, he would refer it to Mr. Keary, take the matter up with Mr. Keary, or words to [fol. 71] that effect. The Doctor asked, as I recall it, about \$600.00 a lot. Mr. Ebert answered that it was too much, or words to that effect, but that he would consult with Mr. Keary and see what price they would pay the Doctor.

COHANE, LOUIS, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination :

After Dr. Poston returned from the military service he advised me that Mr. Keary and Mr. Ebert were negotiating with him for the purchase of these lots from him, until finally in November, 1919, Dr. Poston informed me that the amount of \$1,735.93 was the amount fixed by Mr. Ebert as the amount necessary to redeem these lots from the mortgage foreclosure, and that he had telephoned Mr. Ebert that he had the check ready and that when he did that that Mr. Ebert requested that Dr. Poston bring with him his army discharge. I then told the Doctor that I had better take the check over and the army discharge with it and see Mr. Ebert myself. I went into Mr. Ebert's office with this check, the exhibit in this case, in the sum of \$1,735.98 and offered it to Mr. Ebert as a satisfaction of the Keary claim on account of the mortgage, costs and expenses. Mr. Ebert did not question the amount of the check, he did not question the manner or form of the tender. He asked to see the army discharge, he wanted to make notations from it, and I read to him the notations from it that he requested, and I also permitted [fol. 72] him to examine the army discharge; after examining the army discharge Mr. Ebert said that before he could say whether or not he would accept the check he would have to consult with his counsel. He did not claim at that time that the mortgage foreclosure was valid, he merely said he would have to take the matter up with his attorneys. I communicated with Mr. Ebert some time later for the answer of his counsel and was not able to get it at that time. I think he mentioned two men as the attorneys, one of whom was Smith, and the other whose name I have forgotten, he gave me no definite answer then. Then, subsequently, I went in with Mr. Bartlett and again tendered the same check. At that time Mr. Ebert said that he had not yet taken the matter up with his attorneys, not gotten the answer, and Mr. Bartlett insisted that Dr. Poston had been in the military service and he knew whether or not he wanted to accept that check, and that we were entitled to an answer then as to whether or not he would accept this check in redemption of that mortgage, costs and expenses. Mr. Ebert did not

give an answer. He said he would have to get it from his counsel. And subsequently, on January 13, 1920, I went with Dr. Poston to the office of the Register of Deeds for Wayne County. I have forgotten the name of the man, but the Deputy Register of Deeds was there and I offered to pay off the amount of the mortgage as he calculated it, having with me a certified check in the sum of \$1,850 as exhibited in this case, and \$200 in cash. The Deputy Register said that he did not know whether or not he could accept it, and I had to see the Ass't Prosecuting Attorney. I insisted upon our rights to redeem and offered the check and the money, and the [fol. 73] Deputy Register of Deeds would not accept it as a satisfaction of the mortgage.

Cross-examination.

By Mr. Groefsema:

The tender by check to Mr. Ebert was made as of the date of the check, November 19th, 1919.

KEARY, ANDREW J., recalled.

Cross-examination.

By Mr. Cohane:

The mortgage on 20 lots at \$200 per lot has been paid off on all except 8. Since I was in court last, I have not prepared the figures which would show what is due upon this mortgage at this time. Originally there were 20 lots covered in this mortgage.

Q. Mr. Keary when you were last on the witness stand I asked you a great many questions with reference to the letter of July 24, on the theory that the letter was written to Dr. Poston. Do you know whether or not such a letter was written by you to myself, Louis Cohane?

A. I have no recollection of writing any such letter.

Q. So, that in substance your answers to the questions previously asked with reference to the letter having been written to Poston, the same answers apply to whether or not such a letter was written to Cohane?

A. I gave you a statement of what was due on the property at that time.

Q. And you never wrote to me that you know of?

[fol. 74] A. I do not recall a conversation with you over the telephone on or about July 24th, 1919, or that you said over the telephone that Dr. Poston was ready to redeem the lots from the mortgage and that Mr. Ebert said that that would be all right, and that you called me as the mortgagee to give you the figures as to how much was due on or about July 24, 1919 on the mortgage. I have no recollection of your saying you would like to have me send you

that statement in the form of a letter, and that I said that if you would hold the line just a minute I would pull the notes out of my pocket and I could give you the figures over the phone. I never had any talk with you over the telephone before I gave you the figures in which you requested that I put it in writing, so that you might check up on the items of expense, as to the sheriff's fees and advertisement fees, and so forth, and you requested that I send it in the form of a letter.

Q. You don't recall sending any such letter at all?

A. No, sir, I do not. The mortgage was paid off as to all the lots except those involved in this law suit.

LORIMER, Mr. DAVID I., sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Cohane:

My full name is David T. Lorimer, and I am 53 years of age. I have lived in Detroit practically all of my life. I am at present with the Detroit Trust Company, manager of their real estate department, [fol. 75] and have been for the past fourteen years. I am familiar with values of lots all over the City including those lots in question in this case, on Gallagher just north of Davison. I saw those lots just last Saturday or Sunday. These lots in February of 1918 would be worth \$550 to \$600 a lot. In September, of 1919, the lots would be worth about \$100 more. In September of 1917 those lots were worth about \$450 each. These estimates are conservative estimates made by me as based upon my knowledge of real estate conditions in the City of Detroit at that time in regard to loans. I examined these lots again yesterday. I don't think these lots are worth as much today as they were in 1919 on account of the terrible depression at the present time. In other words, our panic, on account of the money situation for building loans.

Cross-examination.

By Mr. Groefsema:

Yes I have seen the property, I am at it all the time. I was out there two weeks ago on a loan on Gallagher. I am appraiser for the Detroit Trust Company for the purpose of making loans. In making appraisals for the Detroit Trust Company for the purpose of making loans, I always place a value on the lots separately, and then on the building separately. My report always goes in separately.

[fol. 76] Redirect examination.

By Mr. Groefsema:

We had some loans out in that district in 1918.

SLOBIN, SAMUEL K., sworn in behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Cohane:

My name is Samuel K. Slobin, and I live at 1411 Burlingame, in the City of Detroit, where I have lived since 1905. I have been engaged in the real estate business since 1910, operating chiefly in Hamtramck, where the lots in question in this case north of Davison on Gallagher Avenue, are located. I have been operating in that section for the last nine or ten years, and I am therefore familiar with values in that vicinity. These lots were worth \$600 each in September of 1917, and on February 5th, 1918, or thereabouts, they were worth from \$100 to \$125 more, I figure about \$700, \$725. In September of 1919 they were worth about \$100 more. I myself own lots on Gallagher. At the present time these lots ought to be worth about \$900 each. As a real estate man I bought and sold lots in this district for a commission.

Cross-examination.

By Mr. Groefsema:

I should judge these lots would be worth 10% less than the figures I have already given for cash. At the present time there is no demand for lots, on account of the business depression and the money [fol. 77] stringency. I saw these lots yesterday.

COHANE, LOUIS, a witness for the plaintiff, being recalled to the witness stand testified as follows:

Direct examination:

On or about July 24, 1918, I called Mr. Kearny on the telephone at the telephone number of Mr. Ebert in the Majestic Building and I spoke to him personally, I asked for Mr. Keary, and a man who said he was Mr. Keary spoke to me personally. I told him that I had been informed by Dr. Poston that he was going to clear these lots of the mortgage and that Mr. Ebert had said it was all right with Mr. Keary, that I called Mr. Keary in order to get the figures that it would take, the money that it would take to redeem these lots from the mortgage. Mr. Keary said he could give me those figures immediately if I would just hold the line, he had the figures handy. He gave me a total sum of \$1,948.39, but I requested that he send it to me in the form of a letter. He asked why I needed a letter when I had the figures over the telephone and I told him that I wanted the letter in order that I might check up the various items that constitute the total that he gave me as to the sheriff's

fees and interest, register fees, tax stamp, legal news, attorney, etc. That letter was sent to me, fixing the amount which he would take to redeem the lots from the mortgage.

Cross-examination:

By Mr. Groefsema:

Paper marked Exhibit A offered and received in evidence, being [fol. 78] a sheriff's deed covering the lots in question in this case.

Q. Are you quite sure, Mr. Cohane, that it was Mr. Keary that you talked to on the 'phone on that day?

A. I only know that I called him, I called Mr. Ebert's number by telephone; the gentleman who said he was Mr. Keary spoke to me and I know that I have seen Mr. Keary there a number of times and I know that I have been informed by Mr. Ebert that he comes there about every day, I think he fixed the time that he came there between 3 and 5 every day.

Plaintiff rests.

Mr. Groefsema: At this time, in behalf of the defendants, I make a motion that the Bill of Complaint be dismissed on the ground that all the testimony in this case, is undisputed, the mortgage foreclosure, sale, recorded——

The Court: I don't want to interrupt you at this time, but suppose you put your motion formally on record, then produce such testimony as you want and I will hear you in the closing.

KEARY, ANDREW J., called by the defendant, testified as follows:

Direct examination.

My Mr. Groefsema:

At the time I made this loan, my best judgment was that the lots were worth \$350. During the time that this mortgage was in force against that property, I was not satisfied with my security, as it was too near the danger limit. I have been in the real estate [fol. 79] business about ten years, but I do not claim to be an expert. At the time of the sheriff's sale in February, 1918, I do not consider that the lots were worth as much as they were when I made the mortgage loan. During the time the mortgage was in force I paid \$296.80 for sidewalk taxes as shown by Exhibit B, and Exhibit D is a receipt for \$8.86. Exhibit C is for sidewalk tax. Exhibit D is for Wayne County tax. Exhibit C is tax receipt of 1919 for \$14.32.

Mr. Cohane: What is the date of payment.

Mr. Groefsema: The date of payment being on December 31, 1919.

At the time the mortgage was given, there was only one abstract

given. At the time of the sale of these 8 lots, I provided abstracts for all of them. They cost me \$49.00, for them all, seven in all, and certifying the same cost me \$19.50.

Q. You are not the owner of these lots at the present are you?

A. No.

Q. Did you sell them?

A. Yes, sir.

Q. Before the suit was started in this suit?

A. Yes, sir.

Q. How much did you get for the lots?

A. I got \$325 a lot.

At the time of the sale there were sidewalks on these lots. I don't know whether or not there was water. I don't remember any telephone conversation with Mr. Cohane. I remember having a talk with Dr. Poston before the mortgage foreclosure sale, asking [fol. 80] him what we could expect of him, and he said he could not pay. I told him that I would have to take action to collect. I think I set a time for him to pay it, furnished Mr. Cohane with a statement of the amount due. The purpose in doing that was because Mr. Ebert asked me at the request of Mr. Cohane who wanted the amount due me on the lots on that day, and I sent the statement to Mr. Cohane, what was due, it is a matter of record what is due me, the amount of the mortgage and the expenses attached to the foreclosure and taxes, etc., and interest.

Q. Before this Bill of Complaint was filed, and before you had resold the lots, Mr. Keary, were you at any time willing to accept the money from Dr. Poston?

A. Before the lots were sold?

Q. No before this suit was started.

A. We were willing provided the Doctor could show us that he had any rights in the lots.

Q. Provided he could show you he had any rights there?

A. Yes, if he had any rights there, we never objected to it if he could show his rights, we never objected to respecting his rights if he had any.

Q. That is his rights relating to the question whether the military service had any effect upon this foreclosure sale?

A. Yes. I instructed Mr. Ebert we would insist on seeing the Doctor's military service before respecting his rights, if he had any, that is all we asked, to show his military service. I think I later saw it. The Doctor did not show me. The Doctor disappeared when asked the question, he did not report any more. The next [fol. 81] we heard was from his attorney, as soon as we talked military service to the Doctor he dropped the subject as far as we know, he said nothing more to us as far as we know, but it appeared in the attorneys' hands later. However, I would say here, that we were obliged to send to Washington to get the record of that military service, and before we got anything we sent to Washington for it. Exhibit E is from the Adjutant General's Office, Washington, and is the record of military service of the Doctor. Yes, we

could not get the Doctor's record. If the Doctor had supplied the record, we would not have sent to Washington for it.

Cross-examination.

By Mr. Cohane:

We were not able to get any information as to the Doctor's military record until we wrote to the War Department and got that. I could not tell you the date on which I sent for it. The envelope in which the service record was enclosed is marked Exhibit F, and contained a letter on the stationery of the War Department, Adjutant General's Office, and is dated March 16th, 1920. The letter is addressed to Honorable Frank E. Doremus, House of Representatives,—Dear Sir: In reply to your letter of the 13th inst. in which you enclose one from Mr. Edmund L. Ebert, Detroit, Michigan, herewith returned, relative to the record of the military service of Dr. Harry P. Poston, formerly 1st Lieutenant, Medical Department, U. S. A., I have the honor to enclose herewith a statement of service in the case of the above named former officer, prepared in accordance with the records [fol. 82] on file in this office, very respectfully, P. C. Harris, Adjutant General, Per—some initials. I think Mr. Ebert told me of a conversation which you had with him in his office with reference to the Doctor's military service on or about November 19th, 1919. I don't remember whether he told me that he made notations from that military discharge paper as to when the Doctor had been appointed, September 24, 1918, and as to when he was discharged May 14, 1919. I don't remember, he might have said so, possibly he did.

Q. Didn't he tell you that he received this Exhibit 3 at the same time that he was offered this check in the sum of \$1,735.93, of date November 19, didn't he tell you he had seen the discharge at the same time?

A. He might have said so, I don't know, I wouldn't say.

Exhibits shown a few moments ago and introduced in evidence by my counsel were for State and County taxes, part of them. I don't think any of them were for City taxes. I don't know now by whom the City taxes were paid, or whether they were paid by Dr. Poston. I don't know the date from memory as to whether or not the taxes were paid by me December 31st, 1919 after the tender had been made to me of the check dated November 19, 1919, that I paid the City and County taxes. I transferred the lots to Mr. Ebert in December, 1919. The deed was dated December 19th, 1919. I have testified that I got the abstracts. I did not attempt to get the old ones.

Q. Did you ever make any objection to the tender made by the plaintiff for the redemption of these lots because of the fact that he had not offered it to you in gold coin instead of by certified check? [fol. 83]

A. He never offered me any tender except that check.

Q. If it was a certified check, it would have been the same as gold? I think I have a copy of plaintiff's exhibit 11 at home. I don't

think I have shown it to my counsel, I am not positive that I have a copy.

Q. You did not consult Mr. Ebert or your counsel before you wrote this?

A. No, it was through Mr. Ebert's instructions I wrote it though.

Exhibit 11 offered and received in evidence. It is dated Detroit, July 24th, 1919, Mr. Louis Cohane, Attorney, 705 Free Press Building. Dear Sir: Below please find figures showing amount due on Lots 32, 35, 37, 39, 41, 43, 45, 47, Sunnyside Subdivision, Mortgage September 25, 1916, by Eddie Hulett and wife, interest computed to August 5th, 1919, but deduction can be made should payment be made before that date. Yours truly, signed, A. J. Keary. November 8, 1917, principal \$1,651.37. Interest \$28.02; Sheriff, \$3.00; Register of Deeds, \$2.50; tax stamp, \$2.00; legal news, \$24.75. Attorney, \$35.00, due February 5, 1918, \$1,756.64, interest to February 5, 1919, \$122.96, total, \$1,879.60, interest to August 5, 1919, \$65.79. Due, August 5, 1919, \$1,945.39. Exhibit 12 is the envelope in which this letter was sent, with my typewritten return address. I could not identify it.

Q. Just look at it.

A. Yes, yes.

Exhibit 12 offered and received in evidence, without objection. It is the envelope enclosing Exhibit 11, and is post marked Detroit, [fol. 84] July 24, 5 p. m., 1919, addressed to Mr. Louis Cohane, 705 Free Press Building, City. Return address on the other side, A. J. Keary, 309 Majestic Building, Detroit, Michigan.

Q. Mr. Keary, that 309 Majestic Building, Detroit, Michigan is the office of Mr. Ebert, is it not?

A. Yes, sir.

Q. And that is where your office is?

A. I haven't any office.

Q. Is that where you received your mail?

A. No, sir.

Q. You put your return address on Exhibit 13 didn't you?

A. I did.

Q. You wanted that mail returned to you there if it was not delivered?

A. Yes, sir.

Redirect examination.

By Mr. Groefsema:

Q. Did you know about the Doctor's military service at the time this was sent—you knew something about it, they had told you something about it, had they? The Doctor had or someone had?

A. What is the date of that please?

Q. July 24, 1919.

A. I presume we had heard about it, I could not say, I would not say whether I saw that record at that time or not, I would not testify I did, I don't remember those dates.

[fol. 85] Recross-examination.

By Mr. Cohane:

I remember seeing Mr. Warren just a few days after Dr. Poston had entered the service, and he told me that the Doctor was in the service. I did not tell him that the property had been sold to Mr. Ebert on mortgage foreclosure, I don't think so, it was not sold at that time.

Q. On the mortgage foreclosure?

A. I don't know.

Q. You don't know. Do you remember at that time that Mr. Warren offered to pay you the interest on the mortgage to that date and you said you could not accept it because the property had been sold on mortgage foreclosure?

A. I don't know, maybe I did, I don't know, I would not say one way or the other.

EBERT, EDMUND L., sworn in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Groefsema:

My full name is Edmund L. Ebert, and I am a real estate broker and have been for twenty years. My offices are at 309 Majestic Building. I have been there for twenty years, not in that particular room, that length of time. In September, 1916 I secured a loan for Mr. and Mrs. Hulett, from Mr. and Mrs. Keary, represented by the mortgage in this case. At that time I was at 309 Majestic Building. [fol. 86] My experience respecting real estate values and the appraisal of them in the city in brief is that I have looked at hundreds of pieces of property for customers and for myself for the purpose of making loans, and buying and selling both vacant and improved property. At the time the mortgage was made, on September 25th, 1916, I told Mr. Keary these lots were worth \$350 each. On February 5th, 1918, at the time of the sheriff's sale there was very little demand for vacant on account of the war with Germany.

Q. Do you know whether any improvements were put into that section of the city subsequent to the execution of this mortgage?

A. Yes, sir.

Q. What were they?

A. Sidewalks, water, electric light.

I don't know positively whether they were put in before or after the mortgage foreclosure sale.

Q. What value do you place upon the lots at this time independent of any improvements or buildings?

A. Just the lots, say with the improvements?

Q. Yes.

A. Why it would be difficult, very difficult to get \$500 cash for them.

Q. Have you any property in that section, vacant?

A. Yes, in that particular block, both houses and lots.

I would be willing to sell them for \$500 cash. I have been trying to sell them for 8 or 9 months for \$500 apiece, but could not sell them, including the improvements that are there.

I have forgotten the exact date when I first heard of Dr. Poston's military record, or military service. Mr. Warren came into the [fol. 87] office, he was a stranger to me. I notified him by letter about three weeks before the mortgage was due. I called him several times afterwards, and told him that Mr. Keary insisted on the principal and interest of that mortgage being paid. I kept following him up, and Mr. Keary was after the money repeatedly. So when Mr. Keary came in my office, he said "Heard anything from Dr. Poston?" I said "No, I guess I had better telephone him." I called the doctor on the telephone, and he told me, he said, "I have been speculating, I am broke, I can't pay anything." So I said "I guess you had better tell that to Mr. Keary because he won't wait any longer." Mr. Keary stepped to the telephone. I heard Mr. Keary say "Well, doctor, if you can't set the time when you will make the payment, I will set the time, and starting immediately," right there in my presence. After that communication and those telephone conversations the matter was placed in the hands of an attorney for foreclosure. Attorney S. Reed Smith handled it. Exhibit 2 is the original mortgage. I was not present at the time these lots were sold on the Sheriff's sale. They were bid in for the defendant by Norman H. Choate who was associated with me in my office. Exhibit A is the sheriff's deed, offered and received in evidence, without objection. Also the original mortgage likewise. After the mortgage foreclosure sale, I first heard that Dr. Poston was in the military service. Since the Doctor's return from the military service, I had several conversations with him respecting his military service.

Q. Now the records introduced so far, Mr. Ebert, as I recall them, show that Dr. Poston enlisted in September, 1918 and was discharged May 14, 1919?

[fol. 88] A. Quite a time after that, because I remember the Doctor telling me after he had been discharged he had been away visiting, he had been away for several weeks, I remember that positively, so I set the date from that, it probably was about July or August, 1919. Some time after that I saw the doctor's military service record. I cannot remember the exact time.

Q. What was the conversation that took place between you and the doctor respecting these lots, and the military service record.

A. In regard to military service?

Q. Yes.

A. I told the doctor I had received positive instructions from Mr. Keary to find out his military service record, that if he intended to redeem it depended absolutely upon his military service as to whether Mr. Keary would give him any right to redeem, he was

perfectly willing to deed back if the doctor was legally entitled to it, and that the doctor was to produce his military service.

Q. Did you ask that?

A. I did, yes.

Q. Were you furnished with it?

A. From Dr. Poston?

Q. Yes.

A. No, sir.

Q. Did you write for it?

A. I did, yes.

Q. What did the Doctor say when you asked him for his military record?

A. Well, he seemed greatly surprised and said that he would show it. I subsequently wrote to Congressman Frank Doremus at Washington.

[fol. 89] I received a reply from the War Department, although I could not fix the date without seeing the paper. Subsequent to the mortgage foreclosure sale, I purchased the lots from Mr. and Mrs. Keary for \$325 a lot. I thought that was under the market price. Before making the purchase I consulted four attorneys respecting Mr. Keary's title in these lots, and relying upon their advice, I purchased them. I consulted Attorneys S. R. Smith, Elmer H. Groefsema, Ezra Frye, and another attorney over in the Dime Bank Building that used to call at the office, I have forgotten his name. I do not own any of the eight lots at this time.

Q. When did you resell them, do you recall whether it was before or after this suit was started?

A. Why, I think I sold them after the suit was started, I think so, I don't remember the date of the suit, I was not served with papers at that time.

Q. The suit was started—this will refresh your recollection—on the 19th of August, 1920.

A. 19th of August, 1920.

Q. Yes.

A. I had sold the lots previous to that, I am almost certain, yes.

Q. To whom?

A. Mr. Edwards, a builder.

I sold them to a Mr. Edwards, a builder, and there are now houses on these lots. At the present time, I have no interest in these lots because I have been paid in full the contracts. I remember Mr. Cohane calling at my office with respect to the Doctor's right to redeem. There were several consultations on that point.

Q. Do you recall about when that was?

[fol. 90] A. This was some time after I had told Dr. Poston it was necessary to produce the military record. The Doctor never appeared after that. Mr. Louis Cohane appeared several weeks, I think after that and he said he represented Dr. Poston and he said that he came over to explain the Doctor's military record and that he had looked it up and he was of the opinion that the Doctor had several months to redeem. I told him then that Mr. Keary insisted

positively that the Doctor would have to prove to the satisfaction of his attorneys that he had a legal right to redeem, before he would do business with the Doctor, and I then made an appointment for Mr. Cohane to meet Attorney Smith representing Mr. Keary at my office to talk the matter over.

Q. Was the date of the doctor's service and the date of the mortgage sale and the recording of the deed gone into?

A. Everything, they had a long conversation, it must have lasted half or three quarters of an hour I guess, and that was everything, that was the whole thing they talked about, the doctor's legal right to redeem, as Mr. Keary had positively insisted on that point.

Q. It was figured out at that time as to how long the Doctor had been in the service, was it?

A. Yes they had the dates.

This was in my private office. It was some time later that a check was tendered at my office.

Q. Did you see it, Mr. Ebert?

A. Mr. Cohane, Mr. Louis Cohane came in my office, and he said [fol. 91] Mr. Ebert, I would like to leave a check for Mr. Keary. I said is that in reference to Dr. Poston? and he said, yes. I said Mr. Cohane, I have positive instructions from Mr. Keary not to accept any money on that deal, you will have to take it up with Mr. Keary, and I said furthermore, instructions are that you will have to prove to the satisfaction of his attorneys the same as we talked before, as to the Doctor's legal right to redeem. If you can show the Doctor has a legal right, Mr. Keary told me that he was perfectly willing to re-deed the lots without any litigation of any kind and he was very anxious to avoid litigation.

Defendant's Exhibit G, deed dated December 18, 1919, and recorded April 26, 1920, received in evidence.

The tender check is dated November 19th, 1919, for \$1,735.93. From the reading of that date, does that refresh your recollection as to about when that was?

A. I did not handle the check, Mr. Groefsma, and I am not positive as to the date. I made no notation of it.

Cross-examination.

By Mr. Cohane:

I have been a real estate dealer for twenty years, and I consider myself competent. I recall when you brought the military service discharge papers of the doctor to my office, and I remember that I wanted you to leave them with me. You told me you could not do so. I remember that I requested that I be permitted to examine them, and that I was permitted to do so; that I made notations from it as to when the doctor entered the service, when he had been discharged, and other things from that record. I do not recall that [fol. 92] on or about November 19th, 1919, you offered the check for \$1,735 odd dollars. As to the doctor's military service, I wrote it down on a pencil memorandum.

Q. So that when you wrote to Congressman Doremus on the day you mention, you had that information in your files, didn't you?

A. I don't think I had it at that particular time. I had an object in writing. I wanted to dispose of the lots, and I knew on account of the doctor having been in service it would be necessary to prove to the satisfaction of someone, possibly necessary, as to the doctor's service record. I wanted that official service record to show to anybody that I might dispose of the lots to, exactly. The first time I had any intimation or idea that the doctor was in the military service was when Mr. Warren came into the office and told me. Mr. Warren came in and asked for Mr. Keary, and I took Mr. Warren into the other office and introduced him to Mr. Keary, and he asked Mr. Keary regarding the mortgage of Dr. Poston, and Mr. Keary replied that he had foreclosed, and Mr. Keary told Mr. Warren at that time that he did not know that Dr. Poston was in the military service. At that time I did know what Mr. Warren said, that Dr. Poston was in the military service. I know you were not in my office subsequent to the time that suit was started in this matter. I remember going over to your office after suit had been started, and service had been made on Mr. Keary, but no service had been made on me of the bill of complaint in this case. I did not tell you at that time that I had bought the property.

Q. Why didn't you?

A. I don't know as I bought it at that time, I don't remember.

[fol. 93] Q. You had bought it before that time, hadn't you?

A. I don't know. How do you know that I bought it before that time?

Q. When you bought the lots on December 18, 1920, that was subsequent to the time that suit had been started in this case, wasn't it?

A. I have forgotten the dates.

Q. The deed is December 18, 1919, you had bought the lots before suit was started?

A. Bought them the day of the deed.

Q. That is before the suit was started?

A. I don't remember the date suit was started.

Q. Don't you remember that suit was started in 1920?

A. I don't remember the day.

Q. You don't remember you were in my office to see me in August or September, 1920?

A. I said I was in your office, but Mr. Keary had been served, I had not been.

Q. You did not tell me at that time you had bought these lots in December?

A. No, didn't say anything to you about it, no. When I bought this property in December, 1919, I was familiar with the title. I don't remember particularly that I examined the records in the Office of the Register of Deeds of Wayne County, Michigan, before I bought this property. I don't remember whether I had an abstract certified and brought down to date. I paid \$2,600 cash for this property.

Q. You knew the title was in question?

A. Oh, no.

Q. Didn't you know sufficient that it was in question to make you consult four different attorneys about it?

[fol. 94] A. I found out that there was no cloud on the title, the doctor was trying to cloud the title in order to shake the Christmas tree, but we stated——

Q. You found out there was no cloud on the title?

A. No cloud on the title.

I conferred with different attorneys in regard to the Soldiers and Sailors Act that you have been talking about as to whether that would entitle the doctor to redeem the lots, and each and every one told me he was out months before. I don't remember in regards to this particular deal examining the records in the office of the Register of Deeds.

Q. At any rate you knew it was claimed by the attorneys for Dr. Poston at the time that the doctor had a right to redeem, you knew that, didn't you?

A. I didn't know that he had any attorneys at that time.

Q. Didn't know that, that I or Mr. Bartlett claimed for him that he did have a right to redeem?

A. You were the only one that claimed to be the attorney. Bartlett never claimed. You said that the Soldiers and Sailors Act gave him the right to redeem, that is what you said.

Q. Yes, you knew that he claimed that through me before you bought the lots?

A. I heard what you said, and didn't believe you. I didn't believe you and I consulted four other attorneys who said you didn't know what you were talking about. I did not file a bill to remove the cloud from the title after it was claimed that the doctor did have a right to redeem. Before I got the property I got one abstract from [fol. 95] Mr. Keary and his promise that he would furnish be an abstract for each and every lot. I had the abstract brought down to date. I don't think that I knew at that time that there was a deed on record, Exhibit 7, in this case, recorded in the office of the Register of Deeds for Wayne County, Michigan, on December 16th, 1919.

Q. When did you sell these lots to Mr. Edwards?

A. I would have to look up my papers to show the exact date.

Q. You know that you were ordered to produce in this case all the records, papers, writings and documents of any kind and character relating to the property in controversy in this case, didn't you?

A. Mr. Groefsma did not say anything to me about it. I have the records over to the office. I will bring them in this afternoon.

Q. All the records of any kind and character pertaining to this property in your possession or control. Will you bring them over this afternoon at 2 o'clock?

A. I will if I am ordered by the court.

Mr. Cohane: All right, I will ask the court to order it.

Q. How much did you sell them to Mr. Edwards for?

A. Why should I tell you?

Q. I am asking you.

A. I won't answer unless I have to.

Q. You are a witness on the stand.

The Court: Take an answer.

Q. You have an attorney to take care of your rights, it is not for you to object, it is for your attorney.

The Court: Take an answer.

A. I sold them on builder's terms, if I remember correctly, \$50 [fol. 96] down, \$550 including sidewalk tax paid in full and an abstract for each lot. I sold them to Mr. Edwards a few months after I bought them. I gave Mr. Edwards eight abstracts brought down to date before I transferred them to him.

Q. Eight abstracts certified to date before you transferred them to Edwards?

A. I brought one abstract down at that time, covering eight lots that was certified to date. That was after he made a deposit and I think then before I gave the deed. I think he deposited \$50 on each lot. In the receipt which I gave him for this deposit, I agreed that I would furnish an abstract before the deal was closed, and that the abstracts had to show a good title.

Q. Have you got a copy of that receipt or the receipt itself?

A. I don't know, I think I have, I am not certain.

Q. Will you bring that into court at 2 o'clock?

A. I am not certain as to that.

Q. Bring that in. You got your deed on December 18, 1919. How does it happen you did not record your deed until April 26th, 1920?

A. Because I did not record it until that date.

Q. That is how it happened?

A. That is how it happened.

Q. Any particular reason why it was not recorded?

A. I did not record it.

Q. No particular reason why you did not record it, was there?

A. (No answer.)

Q. Mr. Ebert, as a real estate man of 20 years' experience, you knew that if you had a deed that was not recorded nobody was bound by any notice of your rights as long as your deed was not recorded, didn't you?

[fol. 97] A. Yes, I had an object in not recording it.

Q. What was the object?

A. Acting under the advice of Mr. Groefsmma, he told me not to record the deed at that time.

Q. What reason was given?

A. He thought you could come——

Mr. Groefsmma: I object to that as being privileged.

The Court: I think that is privileged.

Mr. Cohane: I don't know that counsel can claim the privilege unless the client does.

Mr. Groefsma: I claim it in his behalf.

The Court: All right.

Mr. Cohane: A privileged communication? Does it come within the privilege?

The Court: A communication made between attorney and client.

Mr. Cohane: Is the communication of such a nature so concerning matters in this case as to come within the privilege?

The Court: I think it does.

Q. Then you refuse to answer the question as to why you did not record your deed for four months thereafter on the grounds that it was on the advice of counsel and that it is a privileged communication and you do not have to reveal why you did not do it, is that right?

A. Yes, sir.

You never tendered me a check. Never. Mr. Bartlett and you were never in my office at a time when he and you tendered me a check. No.

Q. Well, have you seen that army discharge before?

A. I would not say as to this particular discharge.

[fol. 98] Q. Does that bear the same notations as to the entry into the service and his discharge as you made at the time?

A. I haven't my notations here.

Q. You have them at your office.

A. No, I don't know, I don't think so, no.

Q. Do you recall at the time I did confer with you as you say, for half or three-quarters of an hour that I made the claim to you that the period of redemption could not run as against the doctor while he was in the military service?

A. You made the claim?

Q. I told you that the period of redemption could not run against him during the time that he was in the military service?

A. That was your opinion you said.

Q. But you had notice at that time of what Dr. Poston's claim was through his attorney that the period of redemption could not run against him while he was in the military service?

A. I remember your mentioning that, yes. That was quite a long time before I got my deed. I remember the time when you and Mr. Bartlett were at the office to see me. You did not offer me any checks, certified checks, at all.

Q. I take it that in all these conferences with Dr. Poston and myself and Mr. Bartlett with reference to these lots you were acting as agent for Mr. Keary?

A. No, I would not say that?

Q. Who were you acting as agent for?

A. I don't think I was an agent for anyone. Mr. Keary transacted business, he said, if they had anything to offer that I should tell him about it.

[fol. 99] Q. I will ask you whether or not at that time you were protecting Mr. Keary's interests?

A. I don't think I was.

Q. You don't think so?

A. No. Simply taking any memorandums or any notations, any offers that they might have, that was all. I had no authority from Mr. Keary to act for him.

Q. Did you communicate to Mr. Keary these various conferences, conversations and negotiations that you had with either Dr. Poston or myself and Mr. Bartlett and Mr. Warren, did you communicate these to Mr. Keary?

A. Why I had no conversation with Mr. Warren, never did have.

Q. Well, did you communicate the conversations or negotiations, conferences that you had with myself and Dr. Poston and Mr. Bartlett to Mr. Keary?

A. I only met Mr. Bartlett once in reference to that transaction.

Q. Did you communicate them to Mr. Keary?

A. I told Mr. Keary that they were in and threatened him, he and I both.

Q. You told him the conversation?

A. Yes, I told him about your threats, yes.

Q. Told Mr. Keary what the conversations were that you had with the doctor as you had them, is that right?

A. I told Mr. Keary——

Q. Is that right or isn't it?

A. I told Mr. Keary——

Q. Is that right or isn't it right?

(Question read by the reporter.)

A. I told Mr. Keary——

Q. Yes or no, is that right?

[fol. 100] A. I can't answer without an explanation, your Honor, I don't think.

Mr. Cohane: If your Honor please I submit——

The Court: The question is, did you report the conversations that you had to Mr. Keary?

A. Why in substance I did.

Q. In substance; that is all right. Now then, the negotiations and conferences that you had with me with reference to this matter, did you repeat them in substance to Mr. Keary?

A. I think I only had one meeting with you, Mr. Cohane.

Q. Did you repeat that to Mr. Keary in substance?

A. I told Mr. Keary about the meeting with you.

Q. In substance, is that right?

A. Yes.

Q. And the one that you had when Mr. Bartlett was present and I was present, you repeated that in substance to Mr. Keary, is that right?

A. You had been in and threatened him, both of you.

Q. Did you repeat in substance what happened when I and Mr. Bartlett were in the office?

A. Yes I did.

Q. You did?

A. Yes, sir.

We bid the property in at the mortgage foreclosure sale in the name of Mr. and Mrs. Keary. I know the handwriting of Mr. Choate when I see it, and I can say that the deed of Mr. Keary is in Mr. Choate's handwriting. I am positive it is not my handwriting. I am quite positive it is not Mr. Keary's handwriting. I remember [fol. 101] Mr. Choate's handwriting, and I am as certain as I can be that it is his writing.

When I sold the lots to Mr. H. D. Edwards I gave him a warranty deed as I had taken one from Mr. Keary. I feel that both Mr. Keary and myself are perfectly financially responsible, so that so far as our transfers are concerned to anybody else, if the title that we conveyed is not good we are thoroughly responsible.

I sold the lots to Mr. Edwards on terms, \$50 down and the balance of \$550 in six months or so. I gave Mr. Edwards a warranty deed for each and every lot, he and his wife, joint deeds.

Q. Now you want it clear upon this record, Mr. Ebert, that you never saw this Exhibit 5 before?

A. I would not say as to that, Mr. Cohane. I will answer just the same as I answered before, that when you came in you said you had a check for Mr. Keary and I refused to accept it.

Q. You refused to accept it?

A. Yes, sir. And I took no memorandum as to the amount, date, or anything else.

I don't know whether or not I knew this car line was going in on Davison Avenue for months and months before it went in. Whether the car line was in or was not in would not affect the value of the lots to more than 5 or 10%. I think the car line was in September, 1917. If I remember correctly, there were two or three houses in the block at that time when we went out there. I don't know whether or not they were built by Mr. Edwards. I didn't know that in November of 1919 Mr. Edwards had offered Dr. Poston \$600 each for these lots.

Q. Mr. Keary testifies that you are carrying now for him about [fol. 102] 50 or 60 mortgages. Don't you keep any record of what the principal is on each one of these 50 or 60 mortgages, how much the interest is and when it is due?

A. No, no, he gives me a monthly statement, Mr. Cohane, furnishes me a monthly statement as to the principal and interest due on the different mortgages.

Q. You collect them for him?

A. Yes, not all. I collect most of them.

Q. So that each month you get a monthly statement from Mr. Keary, mortgage on such and such property, the mortgage is such and such a price, or the principal is so much and the interest so much?

A. Yes, he never mentioned principal unless the mortgage is due. I presume Mr. Keary furnished me on the first of September, 1919, a statement of the amount due, with the interest, costs and expenses of the Poston mortgage.

I examined the sheriff's deed before I put it on record. The

sheriff's deed was dated February 5th, 1918, and was delivered on or about February 5th or 6th, 1919. I usually go over to the Register of Deeds' office after them.

This attorney, Smith, who conducted the sale for Mr. Keary, is the same attorney whose advice I received with reference to whether or not the doctor had any rights in the property. He did some work for me. Mr. Groefsema, who is attorney for Mr. Keary, is also my attorney, and is one of the attorneys whom I consulted with reference to this matter. Mr. Frey I have known for many years in the Majestic building, in the same building as my office is.

[fol. 103] Q. Who is the other one?

A. Some attorney in the Dime Bank building that used to come in to see me with reference to some matters, I didn't know him very well, I simply took the matter up, I thought some of his opinion, that is all.

(The court then adjourned to 2 P. M.)

(Cross examination of witness Ebert resumed by Mr. Cohane.)

Q. There was a receipt that you were to bring in this afternoon showing when you sold this property to Mr. Edwards.

A. Yes, after diligent search I failed to find the paper. My record does not show when Mr. Edwards purchased the property from me. At the time I sought advice from the various counsel whom I have mentioned, I told them fairly and completely all of the facts within my knowledge as to the circumstances surrounding this deal. I presume it was on the information as to the facts which I gave them that they gave me the advice and the counsel I have mentioned here.

Q. Did any one of those counsel suggest to you that you should remove the cloud from your title of the doctor's claim by filing a bill to quiet your title?

Mr. Groefsema: I object to that as being incompetent.

The Court: I will take an answer.

A. Not that I know of, no, sir.

Q. If they had done so you would know it, wouldn't you?

A. Oh yes.

Q. Did you tell any of these various counsel that the doctor's claim was of record, having been recorded on December 18th, 1919?

[fol. 104] A. That his claim was on record?

Q. Yes.

A. I didn't know he had any claim.

Q. You didn't know that he had any?

A. No I didn't know he had any claim.

Q. You took no court proceedings of any kind or character to dispose of the doctor's claim or his claim that he had a claim?

A. I did not.

Q. Now I wonder if you recall at the time that I had that conference with you in your office that you testified to as between a half and three-quarters of an hour, did I tell you that following the

armistice November 11, 1918, doctor had made repeated and determined and stubborn efforts to secure his release from the service as soon as possible?

A. I don't remember that, Mr. Cohane.

(Paper marked Exhibit 13.)

Mr. Bresnahan: I would like to ask counsel what the purpose of this line of cross examination is.

Mr. Cohane: The purpose of this cross examination is to show that not alone was every attempt made to get the doctor out of service as soon as the emergency was passed, in order that he might care for his obligations, but that as a matter of equity, the defendants in this case knew that these efforts had been exerted.

(Paper marked Exhibit 14.)

I was not shown Exhibit 14, the reply of the officer in command to Exhibit 13.

Q. Well, have you with you any other record or papers in the nature of those spoken of this morning when you were examined that you were to bring in at two o'clock?

[fol. 105] A. No, I remember positively destroying the land contract I had with Mr. Edwards when I gave him the last deed to the last lot.

Q. You destroyed the land contract?

A. Yes, both of them, the duplicate and the original.

Q. You have no notations showing—

A. No, the other was his receipt when he made the deposit.

Q. At the time you sold the property did you tell him of Dr. Poston's claim?

A. Did I tell him about it?

Q. Yes.

A. Of Dr. Poston's claim? No, I didn't know the doctor had a claim.

Q. Well, didn't Mr. Edwards or his counsel insist that you get this record that you have in evidence here, that you got from the War Department in March, I think it was, as to the service record of Dr. Poston?

A. No, they had nothing to do with it.

Q. Did you show Mr. Edwards or his counsel that service record?

A. I did, both Mr. Edwards and—I had the service record for a couple of months before I made the deal with Mr. Edwards.

Q. What was the date you made your deal with Mr. Edwards?

A. It was after the date of that letter from Washington.

Q. How long after?

A. Sometime after.

Q. Sometime? What do you mean by sometime?

A. I would say a few months.

[fol. 106] Q. You made your deed to Mr. Edwards a few months after the date of that letter?

A. I made several deeds to Mr. and Mrs. Edwards.

Q. This deal with reference to these lots.

A. Oh. I had the service record before I deeded any of the lots to Mr. Edwards.

Q. How much before?

A. I wouldn't say as to that—some time.

Q. Some time?

A. A couple of months.

Q. A couple of months?

A. I would be guessing at it.

Q. How long before you deeded these lots to Mr. Edwards was it that you had made the contract with him?

A. If I recollect right the lots were sold on builder's terms.

Q. When?

A. When I sold them to him.

Q. When did you sell them to him?

A. The date I sold them.

Q. What date was that?

A. I haven't the contract.

Q. How long before the time that you gave Mr. Edwards a deed was that?

A. Some time.

Q. How much?

A. Well, he had six months to pay me up in full, and he paid me \$50 as I remember it on each lot, and I was to deed to him at any time, there was a release clause in the contract, any time he paid me \$500 he was entitled to a deed, on the lot, provided he was not in [fol. 107] default on the contract, and he called for the deeds at different times as he secured his loans I presume on the houses.

Mr. Edwards didn't raise with me a question as to the doctor's equity of redemption in these lots by reason of his abstract brought down to date showing the doctor's claim in the abstract, except that the attorney for the Capitol Savings & Loan Association that was examining the abstract for them on his application for a loan, wanted to be positive about it. He said that the doctor had put a quit claim deed on record which was noted by the attorney examining the abstract for the Capitol Savings & Loan Association. I showed the attorney for the Capitol Savings & Loan Association a copy of Dr. Poston's service record.

Q. So that after Edwards made his deposit and before the deal was finally closed, you furnished him with an abstract certified to date?

A. Yes, sir.

Q. Showing title to the property?

A. Yes, sir.

Q. Now, didn't Mr. Edwards raise with you a question as to the doctor's equity of redemption in these lots by reason of his abstract brought down to date showing the doctor's claim in the abstract, didn't Mr. Edwards raise that question with you?

A. Mr. Edwards?

Q. Yes.

A. He didn't raise the question. He said he was going—he was securing a loan from the Capitol Savings & Loan Association and he said some attorney that was examining for them wanted to be positive as to that.

My abstract to this property was examined by Mr. Edwards' counsel [fol. 108] and showed a deed of record previous to my giving Mr. Edwards a deed. I paid Mr. Keary \$2,600 for these lots by a check on the Peoples State Bank of Detroit, signed Edmund L. Ebert.

Q. Was it payable to A. J. Keary and wife?

A. I have forgotten about that. I think it was payable to A. J. Keary. I have forgotten about it.

Q. Did you get the deed before you paid the cash?

A. No. I received the deed before I paid the money.

Q. How much before?

A. I guess about 5 or 10 minutes.

Q. About 5 or 10 minutes before?

A. Yes, sir.

Q. So that you did pay the \$2,600 on December 18th, 5 or 10 minutes before he handed you the deed?

A. I would not say as to that, I don't know whether the deed was delivered to me on that day.

Q. Would it be within two or three days of the date the deed bears?

A. I would say so.

Q. You would say so? Have you your cancelled check with you?

A. Not here, no, sir.

Q. I think that is all.

Redirect examination.

By Mr. Groesfsema:

Q. After you issue land contracts on property that you sell, Mr. Ebert, and then give deeds, is it your practice and custom to destroy the land contract?

A. Always, I always destroy the land contract after I give them the deed.

[fol. 109] I remember Mr. Bartlett calling at my office. Mr. Cohane was with him. It was after the doctor had returned from the military service, perhaps in November, 1919.

Q. Was there any feeling of hostility existing at that time, Mr. Ebert?

A. I should say there was, we pretty near had an open fight, they threatened me, Bartlett and Cohane threatened to clean up the office.

Q. Will you state what was done by the parties that came in to see you respecting the redemption of this mortgage?

A. They said if the doctor did not redeem on those lots that they were going to close the office, that the American Legion would be back of them to close the office, and Mr. Cohane made the statement when I went over to see the sheriff that Mr. Keary and I ought to be both tarred and feathered, and I should get the heavier coat, that was the decision, after taking it up with the committee of the Ameri-

can Legion. We had it out hot and heavy. I told him just what Mr. Keary said, there was nothing doing unless the doctor could show legal proof that he was entitled to redeem the lots.

Recross-examination.

By Mr. Cohane:

I was not tarred and feathered, and I was never in any particular fear of being tarred and feathered. I had no fear whatever; I had no fear of my office being closed, and I was not frightened a bit; what they said did not bother me a bit.

[fol. 110] WARREN, WILLIAM W., recalled for further examination.

Direct examination.

By Mr. Cohane:

I fixed the date as to when I had gone to see Mr. Keary and Mr. Ebert as a day or two after the doctor entered the military service. I went to their office as a friend of the doctor for the express purpose of finding out what the interest was and how it could be settled, the doctor having at this time entered the service. I was told that it was too late to pay the interest by Mr. Keary. I was refused the right to pay the interest, for the doctor, to that date, by Mr. Keary.

Exhibit- 13 and 14 received in evidence.

[fol. 111] CIRCUIT COURT FOR COUNTY OF WAYNE

[Title omitted]

CERTIFICATE TO CASE ON APPEAL

In this cause, the evidence having been taken in open court, I hereby certify that the foregoing is the substance of the testimony at large so taken in this cause and upon which said cause was heard, and a final decree therein made by me. I hereby certify that that portion of the testimony set out in questions and answers is necessary to be so stated in order to get a proper understanding of the same; that the exhibits were introduced and read in evidence in said cause upon the hearing hereof.

That the foregoing case as settled by me contains the substance of all of the testimony in said cause on which the decree was made, and [fol. 112] the same was settled within the time prescribed by the laws and practice of the court.

Arthur Webster, Circuit Judge.

Dated Detroit, Michigan, this 12th day of April, A. D. 1922.

O. K.

Elmer H. Groefsema, Attorney for Edmund L. Ebert, Andrew J. Keary, Ella R. Keary.

THE CIRCUIT COURT FOR COUNTY OF WAYNE

[Title omitted]

OPINION—Filed Oct. 12, 1921

Plaintiff filed a bill to be allowed to redeem from a mortgage foreclosure. The sale took place February 5th, 1918, and was made under the power of sale given in the mortgage. The sheriff's deed was recorded within a few days and the statutory time allowed to redeem therefrom ran until February, 1919. In March, 1918, the Soldiers and Sailors Civil Relief Act was passed by Congress. In [fol. 113] September, 1918, plaintiff enlisted in the military service of the United States and was honorably discharged May 4th, 1919.

There is evidence in the record from which it appears that beginning about July 24, 1919, the plaintiff and defendants Keary and Eberts began a series of negotiations for either the purchase of plaintiff's interest or the redemption by plaintiff from the mortgage foreclosure. These negotiations continued over a period of several months and finally were broken off shortly before November 20, 1919. On this date plaintiff endeavored to tender the amount due to redeem but his tender was refused.

I am of the opinion that these negotiations (if commenced within the time allowed to plaintiff to redeem) would amount to an estoppel as against these two defendants at least. An agreement to extend the redemption period if made before the period expires does not need to be upon a consideration in order to make it binding. But such an agreement made after the redemption period has expired must be upon a new consideration.

Wiltzie on Foreclosure, Sec. 1145.

So, in case an estoppel is invoked, if the negotiations are conducted while plaintiff still has a right to redeem, his forbearance to exercise his right is induced by the conduct of the opposite party and the law implies an agreement to extend the time. If the right of redemption had already been lost when negotiations begin, however, plaintiff cannot be in the position of losing any rights by the pendency of negotiations.

[fol. 114] It becomes important then to determine whether on July 24th, 1919, when negotiations began, the plaintiff still had a right to redeem. The statutory period of one year expired on February 5, 1919, but it is plaintiff's claim that his service in the army, by virtue of the Soldiers and Sailors Civil Relief Act, suspended the running of this period. At the time he entered the service the statutory period had approximately four and a half months yet to run and as

plaintiff was discharged from the army May 14, 1919, it is apparent that if plaintiff's contention is correct the period for redemption ran until the latter part of September, 1919.

At the time of the argument I was of the opinion that the Soldiers and Sailors Civil Relief Act applied to the situation at bar. Since that time a study of the Act and recent decisions under it, has forced me, reluctantly, to the conclusion that the situation presented in the instant case does not fall within its provisions.

Undoubtedly the legislation in question is a valid exercise of power on the part of Congress for the commendable purpose of relieving the mind of the soldier from the worries of civil life and enabling him to devote his entire energies to the military needs, and it is likewise apparent that a suspension of the running of a statutory period for redemption from a foreclosure would subserve such a purpose. But, because the broad general purpose would be subserved is not a sufficient reason for reading such a provision into the Act, if it is not covered by express terms or necessary implication. The Act begins with a statement that "protection is hereby extended to persons in military service" etc. and then expressly limits the scope of this protection by saying "and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the continuance of the present war." The provisions which follow deal with proceedings in court, rent and installment contracts, insurance, mortgages and other matters.

The case at bar presents a foreclosure of a mortgage, not in court proceedings, but under a statutory power of sale by advertisement. The sale was complete in all particulars more than a month before the Act of Congress was passed and seven months before plaintiff entered the military service. I can find no provision of the act which relates to a foreclosure sale completed before the soldier entered military service, and no provision expressly extending the redemption period of a foreclosure (whether in court or by advertisement) which took place before the Congressional enactment.

The section relating to mortgages deals with foreclosure sales made during the period of military service or within three months thereafter.

Manifestly, this does not concern an equity of redemption running at the time of entering the service.

Section 3078¹/₄e, of the Soldiers and Sailors Civil Relief Act provides:

"The period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators or assigns, [fol. 116] whether such cause of action shall have accrued prior to or during the period of such service."

I cannot see how this section, in effect, adding the term of the military service to the period limited

"for bringing any action by or against a person in military service"

can be extended in scope so as to include a right of redemption after foreclosure given by statute. It is not necessary to have an action of any kind either by or against the person in military service; at the end of the statutory period, by mere lapse of time, title vests.

An examination of the Soldiers and Sailors Civil Relief Act has satisfied me that (whether designedly or through oversight) it has failed to cover the case of a statutory redemption period which began to run before the passage of the Act. This being true, plaintiff's right to redeem expired February 5th, 1919, and the negotiations between the parties cannot be invoked by plaintiff as an estoppel, since they were had at a time when the right to redeem had been entirely lost.

In this view of the case, it is not necessary to pass upon the claim of counsel for defendants that Mrs. Keary could in no event be considered a party to the negotiations or subject to any claim of estoppel arising from them.

A decree dismissing the bill may be entered by defendants.

Arthur Webster, Circuit Judge.

October 12, 1921.

[fol. 117] IN THE CIRCUIT COURT FOR COUNTY OF WAYNE

[Title omitted]

DECREE—Filed Oct. 22, 1921

At a Session of said Court Held at the Court-house, in the City of Detroit, in said County, on the 22nd Day of October, 1921.

Present: Honorable Arthur Webster, Circuit Judge.

This cause came on to be heard upon the pleadings and proofs taken therein, and having been argued, and briefs having been filed by counsel for the respective parties, and the court having had the same under advisement:

Now, therefore, upon due consideration thereof, it is ordered, adjudged and decreed, and the court now here doth order, adjudge and decree, that the plaintiff's bill of complaint be, and the same is hereby dismissed, and that the said defendants recover of and from the plaintiff their costs to be taxed, and that the said defendants have execution thereof.

Arthur Webster, Circuit Judge.

[fol. 118] IN THE CIRCUIT COURT FOR COUNTY OF WAYNE

[Title omitted]

CLAIM OF APPEAL—Filed Nov. 10, 1921

To the Clerk of said Court:

Now comes the above named plaintiff and hereby claims the benefit of an appeal to the Supreme Court of this state from the decree made and rendered in this cause by the above entitled court on October 22nd, 1921.

Cohane, Rhodes, Garvett & Frankel, Attorneys for Plaintiff.

Dated Detroit, Michigan, November 10th, 1921.

[fol. 119] IN THE CIRCUIT COURT FOR COUNTY OF WAYNE

[Title omitted]

STIPULATION AND ORDER EXTENDING TIME—Filed April 6, 1922

It is hereby stipulated by and between the parties hereto by their respective counsel, that the time within which to perfect the appeal of plaintiff in the above entitled cause to the Supreme Court of this state may be extended to April 12th, 1922.

Cohane, Rhodes, Garvett & Frankel, Attorneys for Plaintiff.

Elmer H. Groefsema, Attorney for Defendants.

[fol. 120] Order Extending Time, etc.

At a Session of said Court Held in Its Court-room, at Detroit, Michigan, in the Wayne County Building, on April 5, 1922

Honorable Arthur Webster presiding.

On reading the annexed stipulation, it is hereby ordered that the time within which plaintiff herein may perfect his appeal to the Supreme Court of this state in the above entitled cause, may be and the same hereby is extended until April 12th, 1922.

Arthur Webster, Circuit Judge.

A true copy. H. E. Torpel, Deputy Clerk.

Plaintiff's Exhibits

EXHIBIT 1

Warranty Deed dated May 16th, 1917, recorded in the Wayne County Register of Deeds' Office May 18th, 1917, in Liber 1197 of

Deeds, page 379, from Eddie A. Hulett and Nellie E. Hulett, his wife, to Harry P. Poston of Detroit, Michigan, conveying lots No. 32, 35, 37, 39, 41, 43, 45, 47 in Sunnyside Subdivision part of quarter section one (1), 10,000 acre tract (Hamtramck) according to the plat thereof recorded December 31, 1892, in Liber 18, page 2 of [fol. 121] Plats, Wayne County Records.

Said premises being situated on the east side of McDougall Avenue, between Davison and Edward Avenues.

(This conveyance is made to correct error in spelling of second party's name in Deed dated February 20, 1917, and recorded in Liber 1154, page 507 of Deeds, on March 2, 1917.)

The Warranty is against all lawful claims whatsoever "Excepting a real estate mortgage in the sum of \$200.00 on each lot or parcel of land aforesaid, which the second party hereby assumes and agrees to pay."

EXHIBIT 2

See Defendants' Exhibit C, pages 139-143.

PLAINTIFF'S EXHIBIT 3

Official Honorable Discharge from the Army of the United States of America of Harry P. Poston, First Lieutenant, Medical Corps, at Headquarters, Port of Embarkation, Hoboken, New Jersey, dated May 14th, 1919, showing service in the Army from September 29th, 1918, to May 14th, 1919.

"Remarks: Services no longer required; termination of the emergency."

[fol. 122]

PLAINTIFF'S EXHIBIT 4

Liberal Loans on Real Estate; Land Contracts Bought & Sold; Construction Loans

Member Detroit & National Real Estate Board

Edmund L. Ebert, Real Estate Broker, 309 Majestic Building, Detroit

Phone: Main 1458

September 1, 1917.

Dr. H. P. Poston, City.

DEAR DOCTOR: Mortgage given by Eddie A. Hulett to Andrew J. Keary on lots located on McDougall near Davison amounting to \$3,800 and interest of \$114 will be due Sept. 25.

Yours very truly, E. L. Ebert.

[fol. 123]

PLAINTIFF'S EXHIBIT 5

Certified Check

The Dime Savings Bank

No. —.

Detroit, Michigan, Nov. 19, 1919.

Pay to the order of Dr. H. P. Poston \$1,735.93/100 one thousand,
seven hundred thirty-five 93/100 dollars.

Broadway-Park Branch.

H. P. Poston.

Endorsement reverse side hereof: Pay to the order of Andrew J.
Keary and Ella R. Keary, husband and wife. Dr. H. P. Poston,
H. P. Poston.

[fol. 124]

PLAINTIFF'S EXHIBIT 6

Certified Check

The Dime Savings Bank

No. 246.

Detroit, Michigan, Jan. 13, 1920.

Pay to the order of himself (H. P. Poston) \$1,850.00/100 eighteen
hundred fifty no/100 dollars.

Broadway-Park Branch.

H. P. Poston.

Endorsement reverse side hereof: Himself, H. P. Poston.

PLAINTIFF'S EXHIBIT 7

Quit Claim Deed Harry P. Poston of Detroit to Albert E. Cather-
wood of Detroit, dated December 16, 1919, conveying lots 32, 35,
37, 39, 41, 43, 45, being the same property described in Exhibit 1.

The following appears in the body of said Deed:

"Hereby there is conveyed the right and interest of first party to
redeem the property aforesaid as conveyed by Sheriff's Deed dated
February 6, 1918, recorded February 7, 1918, in Liber 1032 of
Deeds, on page 526 in the Office of the Register of Deeds for Wayne
County, Michigan, said right to redemption still subsisting in said
first party by reason of his having been in the military service during
the time when otherwise his right to redemption would have been
[fol. 125] foreclosed by the lapse of time."

Recorded December 17, 1919, at 8.30 A. M. in the Wayne County
Register of Deeds' Office in Liber 1329 of Deeds on page 563.

PLAINTIFF'S EXHIBIT 8

Quit Claim Deed from Albert E. Catherwood, a single man, to Harry P. Poston, dated December 17th, 1919, wherein it is stated:

"It is hereby conveyed to second party by first party all of his right, title, interest, claim and demand in and to said property by virtue of deed of second party to first party under date of December 16, 1919.

PLAINTIFF'S EXHIBIT 9

Receipt of the Detroit City Treasurer's Office for 1919 City Taxes to Harry P. Poston, showing payment on August 6th, 1919, for taxes on lots 32, 35, 37, 39, 41, 43, 45, giving their assessed valuation at \$330.00 each showing a tax of \$6.12 on each lot and making a total payment of \$42.84.

PLAINTIFF'S EXHIBIT 10

Receipt of the Detroit City Treasurer's Office for 1918 Taxes to Harry P. Poston, showing payment on August 6th, 1919, for taxes on lots 32, 35, 37, 39, 41, 43, 45, showing a tax of \$7.02 on each lot and making a total payment of \$49.14.

[fol. 126]

PLAINTIFF'S EXHIBIT 11

Detroit, July 24th, 1919.

Mr. Louis Cohane, Attorney, 705 Free Press Bldg.

DEAR SIR: Below please find figures showing amount due on lots 32, 35, 37, 39, 41, 43, 45 and 47 Sunnyside Subdivision, Mortgaged Sept. 25/16 by Eddie E. Hulett and wife.

Interest is computed to Aug. 5, 1919, but deduction can be made should payment be made before that date.

Yours truly, (Signed) A. J. Keary.

Nov. 8, 1917. Principal	\$1,661.37
Interest	28.02
Sheriff	3.00
Register Deeds	2.50
Tax Stamp	2.00
Legal News	24.75
Attorney	35.00
<hr/>	
Due Feb. 5/18	\$1,756.64
Int. to Feb. 5/19	122.96
<hr/>	
	\$1,879.60
Int. to Aug. 5/19	65.79
<hr/>	
Due Aug. 5, 1919	\$1,945.39

[fol. 127]

PLAINTIFF'S EXHIBIT 12

Copy of Envelope

(Detroit, July 24, 5 P. M., 1919, Mich. U. S. Postage, 2 cents.)
 Addressed: Mr. Louis Cohane, 705 Free Press Building, City. Return address reverse side: A. J. Keary, 309 Majestic Bldg., Detroit, Mich.

[fol. 128]

PLAINTIFF'S EXHIBIT 13

Louis Cohane Attorney and Counselor, 705 Free Press Bldg., Detroit

Telephone Main 813

April 12, 1919.

Major Kerns, Port of Embarkation, Hoboken, New Jersey.

In re Lieut. Harry P. Poston (M. D.), Appl. for Discharge

DEAR SIR: In the above matter, as an attorney familiar with the personal affairs of Dr. Poston, permit me to advise you, of my own personal knowledge, that for approximately one year previous to his enlistment, Dr. Poston was endeavoring to arrange his personal and financial affairs so as to enable him to enter the service without undue hardship, considering his wife and child.

The sacrifices the doctor made were because of the emergency facing the United States. With peace practically at hand, I trust that it will be possible to return Dr. Poston to civil life so as to enable him to care for his wife and child, instead of their being recipients of assistance from relatives. In addition, Dr. Poston carries heavy life insurance contracts, the premiums for which are a drain on his financial resources; and when he left Detroit, had

built up a splendid medical practice. These sacrifices, becoming [fol. 129] more acute from day to day, it would seem should no longer be required from him, in view of the passage of the acute emergency for the Government. You appreciate that an extended absence from his practice will make it much more difficult for him to rehabilitate himself.

I have had occasion from time to time to make investigations along the foregoing lines, and if my recommendation as Legal Aid to Red Cross and Alternate Director of Legal Advisory Board for Draft Board No. 6 carries any weight, I am glad to make my recommendation and the foregoing statements in behalf of Dr. Poston's discharge in those capacities.

I trust to hear from you, and am,

Very truly, (Signed) Louis Cohane. LC/MS.

PLAINTIFF'S EXHIBIT 14

Evacuation Office, Office of the Surgeon, Port of Embarkation,
Hoboken, N. J.

April 15, 1919.

Mr. Louis Cohane, 705 Free Press Bldg., Detroit, Michigan.

DEAR SIR: Replying to your letter of April 12th, in regard to Lieut. Harry E. Poston, M. C., I may say that endeavor is being made to replace at an early date all officers who desire discharge and who are urgently needed at home.

[fol. 130] As soon as Lieut. Poston can be released without injustice to others, his discharge will be recommended.

Very truly yours, (Signed) H. N. Kerns, H. N. Kerns, Major,
Medical Corps. HNK/fg.

Defendants' Exhibits

DEFENDANTS' EXHIBIT A

Sheriff's Deed on Mortgage Sale

This indenture made the fifth day of February, in the year of our Lord one thousand nine hundred and eighteen, between Otto C. Klanowsky, deputy sheriff in and for the County of Wayne, in the State of Michigan, of the first part, and Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan.

Witnesseth, that whereas Eddie A. Hulett and Nellie E. Hulett, his wife, of the City of Detroit, Wayne County, Michigan, made a certain indenture of mortgage to Andrew J. Keary and Ella R. Keary, his wife, of the Village of New Hudson, Oakland County, Michigan,

dated the twenty-fifth day of September, A. D. 1916, which mortgage was duly recorded in the office of the register of deeds in and for the County of Wayne, State of Michigan, in liber 795 of mortgages, on page 506, on September 27, 1916, which said indenture of mortgage contained a power of sale, which has become operative by reason of a default in a condition of said mortgage.

[fol. 131] And whereas, by virtue of said power of sale, and in pursuance of the statute in such case made and provided (no proceedings at law having been instituted to recover the debt secured by said mortgage or any part thereof), a notice was duly published that the said premises in said indenture of mortgage described or so much thereof as might be necessary to pay the amount due upon said mortgage, interest, all legal costs, would be sold on the fifth day of February, in the year of our Lord one thousand nine hundred and eighteen, at twelve o'clock noon, Eastern Standard Time, at the southerly or Congress street entrance to the Wayne County Building in the City of Detroit, Wayne County, Michigan, that being the place of holding the circuit court within said county in which the premises described in said mortgage are situated.

And whereas, in pursuance of said notice, I did, on the fifth day of February, in the year last aforesaid, at twelve o'clock noon (Eastern Standard Time) of said day, expose for sale at public vendue, the lands and tenements hereinafter particularly described, and on such sale did strike off and sell the said lands and tenements to Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, for the sum of one thousand seven hundred fifty-six and 64/100 (\$1,756.64), that being the highest bid therefor, and the said Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, being the highest bidders; which said lands and tenements are described as follows, viz.: Premises situated in the Township of Hamtramck, in the County of Wayne and State of Michigan, described as follows, to-wit:

[fol. 132] Lots numbered thirty-two (32), thirty-five (35), thirty-seven (37), thirty-nine (39), forty-one (41), forty-three (43), forty-five (45) and forty-seven (47), all in Sunnyside Subdivision of part of quarter section 1, 10,000 acre tract, Hamtramck, according to the plat thereof as recorded December 31, 1892, in liber 18, page 2 of plats, Wayne County Records. (Said above described lots were offered for sale in separate parcels and as such were sold by me for the sums of two hundred nineteen and 58/100 (\$219.58) dollars, each respectively, aggregating in all the aforesaid sum of one thousand seven hundred fifty-six and 64/100 dollars.)

Now this indenture witnesseth, that I, Otto C. Klanowsky, deputy sheriff aforesaid, by virtue and in pursuance of the statute in such case made and provided, and in consideration of the said sum of money so paid as aforesaid, have granted, conveyed, bargained and sold, and by this deed do grant, convey, bargain and sell unto the said Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, their heirs and assigns, forever, all the said lands and tenements hereinabove

described, with the appurtenances, and all the estate, right, title and interest which the said mortgagors had in the said lands and tenements, and every part thereof, on the twenty-fifth day of September, in the year of our Lord one thousand nine hundred and sixteen, that being the date of said mortgage, or at any time thereafter.

To have and to hold the said lands and tenements, and every part thereof, to the said Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, [fol. 133] their heirs and assigns, forever, to their sole and only use, benefit and behoof forever, as fully and absolutely as I, Otto C. Klanowsky, deputy sheriff aforesaid, under the authority aforesaid, might, could or ought to sell the same.

In witness whereof, I have hereunto set my hand and seal the day and year first above written.

..... Otto C. Klanowsky (Seal), Deputy Sheriff in and for the
County of Wayne, Mich. Signed, sealed and delivered in
presence of: Arthur Hitchins, Robert W. Webb.

STATE OF MICHIGAN,
County of Wayne, ss:

On the fifth day of February, one thousand nine hundred and eighteen, before me, a notary public in and for said county, came Otto C. Klanowsky, deputy sheriff of said county, known to me to be the person described in and who executed the above conveyance, and acknowledged that he executed the same for the intents and purposes therein named.

(Signed) Robert W. Webb, Notary Public, Wayne County,
Mich. My Commission expires June 26, 1921.

[fol. 134]

Evidence of Sale

Eddie A. Hulett et al.

STATE OF MICHIGAN,
County of Wayne, ss:

Nelson L. Korte, being duly sworn, deposes and says the annexed printed copy of a notice was taken from the Detroit Legal News, a newspaper printed and circulated in said state and county, and that said notice was published in said newspaper on the 10th, 17th and 24th of November, 1st, 8th, 15th, 22nd and 29th of December, 1917, 5th, 12th, 19th and 26th of January and 2nd of February, A. D. 1918; that he is the principal clerk of the printers of said newspaper and knows well the facts stated herein.

(Signed) Nelson L. Korte.

Subscribed and sworn to before me this 2nd day of February,
A. D. 1918. H. A. Wright, Notary Public, Wayne County,
Mich. My Commission expires July 30, 1920.

[fol. 135]

Printed Copy of Notice

"S. R. Smith, Attorney, 309 Majestic Bldg.

Mortgage Foreclosure

Whereas default has been made in the conditions of a certain mortgage made by Eddie A. Hulett and Nellie E. Hulett, his wife, of the City of Detroit, Wayne County, Michigan, to Andrew J. Keary and Ella R. Keary, his wife, of the Village of New Hudson, Oakland County, Michigan, dated the twenty-fifth day of September, A. D. 1916, and recorded in the office of the Register of Deeds for Wayne County, Michigan, on September 27, A. D. 1916, in liber 795 of mortgages on page 506, on which mortgage there is claimed to be due at the date of this notice the sum of one thousand six hundred sixty-one and 37/100 (\$1,661.37) dollars, principal and interest, and more than thirty days' default having been made in the payment of the principal and interest, which became due and payable on September 25, 1917; and no suit or proceeding at law or in equity having been instituted to recover the money secured by said mortgage or any part thereof; now, therefore, by virtue of the power of sale contained in said mortgage and of the statute in such case made and provided, notice is hereby given that on Tuesday, the fifth day of February, A. D. 1918, at twelve o'clock, noon, Eastern Standard Time, the undersigned will, at the southerly or Congress street entrance to the Wayne County Building in the City of Detroit, Wayne County, Michigan (that being the place where the Circuit Court for the County of Wayne, Michigan, is held), sell at public auction, [fol. 136] to the highest bidder, the premises described in said mortgage or so much thereof as may be necessary to pay the amount due, as aforesaid, upon said mortgage, with seven (7) per cent interest, and all legal costs and charges provided in said mortgage and allowed by law, including an attorney fee, the premises situated in the Township of Hamtramck, in the County of Wayne and State of Michigan, described as follows, to-wit: Lots numbered thirty-two (32), thirty-five (35), thirty-seven (37), thirty-nine (39), forty-one (41), forty-three (43), forty-five (45), and forty-seven (47), all in Sunnyside subdivision of part of quarter section 1, 10,000 acre tract, Hamtramck, according to the plat thereof as recorded December 31, 1892, in liber 18, page 2 of plats, Wayne County Records.

Dated at Detroit, Michigan, November 8th, A. D. 1917.

Andrew J. Keary, Ella R. Keary, Mortgagees. S. R. Smith,
Attorney for Mortgagees, 309 Majestic Bldg., Detroit, Mich-
igan."

Printer's Bill

5 folios 13 times.....	\$24.50
Affidavit for Publication.....	.25

 \$24.75

Received Payment: Detroit Legal News.

[fol. 137] STATE OF MICHIGAN,
County of Wayne, ss:

Otto C. Klanowsky, being duly sworn, deposes and says that he is deputy sheriff of said County of Wayne, State of Michigan, that he acted as auctioneer and made the sale as described in the annexed deed pursuant to the foregoing printed notice; that the sale was opened at twelve o'clock noon (Eastern Standard Time) of the fifth day of February, A. D. 1918, at the southerly or Congress street entrance to the Wayne County Building, Detroit, Michigan, that being the place of holding the circuit court in the said County of Wayne, State of Michigan, and was kept open for the space of one (1) hour; that the highest bid for said lands and tenements was the sum of one thousand seven hundred fifty-six and 64/100 dollars, made by Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, and that the sale was in all respects open and fair, and that this deponent did strike off and sell the said lands and premises to the said Andrew J. Keary and Ella R. Keary, husband and wife, of the Village of New Hudson, Oakland County, Michigan, who purchased the said premises fairly, and in good faith, as deponent verily believes.

(Signed) Otto C. Klanowsky.

Subscribed and sworn to before me this 5th day of February, A. D. 1918. Robert W. Webb, Notary Public, Wayne County, Mich. My commission expires June 26, 1921.

[fol. 138] STATE OF MICHIGAN,
County of Wayne, ss:

I do hereby certify that the within mortgage deed will become operative at the expiration of one year from the fifth day of February, A. D. 1918, unless otherwise redeemed according to law in such case made and provided.

(Signed) Otto C. Klanowsky, Deputy Sheriff.

Sheriff's Office No. 41123—Received Feb. 6th, Sheriff's Deed on Mortgage Sale, 432,549, Eddie A. Hulett, Et Ux., by Deputy Sheriff, to Andrew J. Keary, Et Ux., Register's Office, Wayne County, ss. Received for record this 7th day of February, A. D. 1918, at 8:30 o'clock A. M. and recorded in Liber 1032 of deeds, on page 526. Paid \$2.50.

(Signed) Otto Stoll.

DEFENDANT'S EXHIBIT B.

Receipt of the City Treasurer to "Andrew J. Karey, Address 309 Majestic Building" for the sum of Two Hundred Ninety-six Dollars

Eighty Cents (\$296.80), showing payment on January 30th, 1920, of a "special assessment" on Lots 32, 35, 37, 39, 41, 43, 45 and 47, of \$37.10 on each lot.

[fol. 139]

DEFENDANT'S EXHIBIT C

Mortgage

This mortgage, made the twenty-fifth day of September in the year one thousand nine hundred and sixteen.

Witnesseth, that Eddie A. Hulett and Nellie E. Hulett, his wife, of the City of Detroit, Wayne County, Michigan, mortgagors, mortgage and warrant to Andrew J. Keary and Ella R. Keary, his wife, of the Village of New Hudson, Oakland County, Michigan, mortgagees, their heirs and assigns, the parcels of land, situated in the Township of Mamtramck in the County of Wayne and State of Michigan, described as follows, to-wit: Lots (30, 31, 32, 33, 34, 35, 36, 37, 38 and 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49) thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, in Sunnyside Subdivision of part of quarter section 1, 10,000 Acre Tract, Hamtramck, according to the plat thereof as recorded December 31, 1892, in liber 18, page 2 of plats, Wayne County Records.

Together with the hereditaments and appurtenances thereof, to secure the payment of the principal sum of Four Thousand Dollars (\$4,000) payable on or before one year from date hereof and interest thereon from date at the rate of 6% per annum, payable semi-annually, until the full payment of said principal sum, according to the terms of a certain note bearing even date herewith, executed [fol. 140] by Eddie A. Hulett and Nellie E. Hulett, his wife, to said mortgagees; and will pay interest at the rate of seven per cent per annum, semi-annually, upon all overdue interest and principal from the time of its or their maturity.

And it is hereby expressly agreed, by and between the parties hereto, as a part hereof:

1st. That said mortgagors within thirty days from the time the same become due and payable, will pay all taxes and assessments which shall be levied or placed upon the said land.

2nd. That said mortgagors will, while the mortgage debt remains unpaid, keep all buildings upon the mortgaged premises insured against loss and damage by fire, by insurers, and in amount approved by mortgagees, with the insurance money, in case of loss, made payable in the policy thereof to the mortgagees, or their assigns as their mortgage interest may appear, and deliver as issued, to the mortgagees, to be kept by them all policies of such insurance, and pay, on their issue, the premium for the same.

3rd. That if the mortgagors make default in the payment of any of the aforesaid taxes, or assessments, or premiums as above covenanted and agreed, said mortgagees, or holder of the mortgage may pay the same, and that the sum or sums so paid shall, from the time of their payment, be due and payable hereon as part of the mortgage debt, with interest thereon at the rate of six (6) per cent per annum.

4. That should default be made in the payment of any installment of principal maturing hereon, before the whole thereof becomes [fol. 141] due, or of any installment of interest when the same becomes due and payable, or of any taxes or assessments or premiums for insurance, or any part thereof, when the same are payable as above provided, and should the same or any part thereof remain unpaid for the period of thirty days, then and from thenceforth, the aforesaid principal sum, with all arrearages of interest, shall at the option of said mortgagees, their legal representatives, or assigns, become due and be payable therefrom and thereafter although the period above limited for the payment of the same shall not then have expired, anything hereinbefore, or in said note contained to the contrary thereof in anywise notwithstanding.

5th. That upon default being made in the payment of principal or interest hereon, or of any part thereof, at the time the same becomes due or payable according to the terms hereof, the said mortgagees, their legal representatives or assigns, are hereby authorized and empowered to grant, bargain and sell, release and convey the said premises, property and appurtenances at public vendue and to execute and deliver to the purchaser or purchasers at such sale good and sufficient deeds of conveyance in law, pursuant to the statute in such case made and provided, rendering any surplus moneys after payment of the moneys due hereon, the attorney fee provided by law, and the costs and charges of such vendue and sale, to the said mortgagor-, their heirs, legal representatives or assigns.

If not in default on the mortgage, parties of the second part agree to release any one lot upon the payment to them of Two Hundred (\$200.00) dollars and interest.

[fol. 142] In witness whereof, the said mortgagors have hereunto set their hands and seals the day and year first above written.

Eddie A. Hulett, Nellie E. Hulett. Signed, sealed and delivered in presence of: Edward E. Hill, Edmund L. Ebert.

STATE OF MICHIGAN,
County of Wayne, ss:

Before me, the subscriber, a Notary Public, in and for said county, this 25th day of September, A. D. 1916, personally appeared Eddie A. Hulett and Nellie E. Hulett, his wife, known to me to be the persons described in, and who executed the within mortgage, and

severally acknowledged the execution thereof to be their free act and deed.

Edmund L. Ebert, Notary Public, Wayne County, Mich.
My commission as Notary Public expires on the 19th day
of Sept., 1919.

WAYNE COUNTY, ss:

Register's Office

Received for record the 27th day of September, 1916, at 9:30
o'clock A. M. and recorded in 795 of mortgages on page 506.

(Signed) Otto Stoll, Register.

[fol. 143] Mortgage Tax Certificate

No. 61475

Section 3, Act No. 91, P. A. 1911

Wayne County Treasurer

STATE OF MICHIGAN,
County of Wayne, ss:

Sept. 27, 1916.

I hereby certify that the amount secured by this mortgage is
Four Thousand Dollars and that I have received Twenty Dollars in
full for the tax thereon.

Edward F. Stein, per J. W., County Treasurer of Wayne
County, Mich.

Book 14, page 28.

DEFENDANT'S EXHIBIT D

Receipt of the Wayne County Treasurer's Office showing pay-
ment by A. J. Keary on December 31st, 1919, of the sum of Eight
and 86/100 (\$8.86) Dollars for delinquent taxes for 1918 on lots
32, 35, 37, 39, 41, 43, 45.

[fol. 144] DEFENDANT'S EXHIBIT E

War Department, the Adjutant General's Office, Washington

Statement of the Military Service of Harry P. Poston

The records of this office show that Harry P. Poston, born No-
vember 6, 1884, at Bonne Terre, Mo., was appointed First Lieu-
tenant, Medical Corps, September 24, 1918, and reported to the Com-
mandant, Medical Officers Training Camp, Camp Greenleaf, Ga.,

for a course of instruction. He was assigned to duty at Hoboken, N. J., and honorably discharged from the service of the United States May 14, 1919, for the convenience of the Government, his services being no longer required. He gave as an address for future reference, 1337-49 David Whitney Building, Detroit, Michigan.

Official statement furnished to Hon. Frank E. Doremus, House of Representatives, March 16, 1920.

By authority of the Secretary of War.

(Sgd.) F. S. Brown, Adjutant General. (Seal.)

The Adjutant General's Office (Official), War Department.

[fol. 145] DEFENDANT'S EXHIBIT F

War Department, the Adjutant General's Office, Washington

In reply refer to 201 (Poston, Harry P.) WW. mvb/217.

March 16, 1920.

Hon. Frank E. Doremus, House of Representatives.

DEAR SIR: In reply to your letter of the 13th instant, in which you inclose one from Mr. Edmund L. Ebert of Detroit, Michigan, herewith returned, relative to a record of the military service of Dr. Harry P. Poston, formerly First Lieutenant, Medical Department, U. S. A., I have the honor to inclose herewith a Statement of Service in the case of the above named former officer, prepared in accordance with the records on file in this office.

Very respectfully, (Sgd.) P. C. Harris, the Adjutant General, per R. R. C.

2 incl. Letter. Statement of Service.

[fol. 146] DEFENDANT'S EXHIBIT G

Warranty Deed

This indenture, made this eighteenth day of December in the year of our Lord one thousand nine hundred and nineteen, between Andrew J. Keary and Ella R. Keary, his wife, of the Village of New Hudson, County of Oakland, State of Michigan, of the first part, and Edmund L. Ebert of the City of Detroit, County of Wayne, State of Michigan, of the second part.

Witnesseth: That the said parties of the first part, for and in consideration of the sum of one dollar and other valuable considerations, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by

these presents, grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part and his heirs and assigns, forever all those certain pieces or parcels of land situated and being in the City of Detroit, County of Wayne and State of Michigan, and described as follows, to-wit:

Lots numbered thirty-two (32), thirty-five (35), thirty-seven (37), thirty-nine (39), forty-one (41), forty-three (43), forty-five (45) and forty-seven (47), all in Sunnyside Subdivision of east sixty (60) acres of the west eighty (80) acres of quarter section one (1) Ten Thousand Acre Tract, Hamtramck, now City of Detroit, as recorded December 31st, 1892, in Liber 18 on page 2 of plats, Wayne County Records.

[fol. 147] Together with all and singular the hereditaments and appurtenances thereto belonging or in anyways appertaining: To have and to hold the said premises, as above described, with the appurtenances unto the said party of the second part, and to his heirs and assigns forever, and the said Andrew J. Keary and Ella R. Keary his wife, parties of the first part, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensembling and delivery of these presents they are well seized of the above granted premises in fee simple; that they are free from all incumbrances whatever and that they will, and their heirs, executors and administrators shall warrant and defend the same against all lawful claims whatsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Andrew J. Keary, Ella R. Keary. Signed and delivered in presence of: Louis L. Ebert, N. H. Choate.

STATE OF MICHIGAN,
County of Wayne, ss:

On this eighteenth day of December in the year one thousand nine hundred and nineteen, before me, Notary Public in and for said county, personally appeared Andrew J. Keary and Ella R. Keary, [fol. 148] his wife, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their own free act and deed.

(Signed) Norman H. Choate, Notary Public, Wayne County, Mich. My commission expires March 29th, 1924.

WAYNE COUNTY, ss:

Register of Deeds Office

This instrument was received for record this 26th day of April, 1920, at 3:30 o'clock P. M., and recorded in Liber 1414 of Deeds, on page 265 as a proper certificate was furnished in compliance with Sec. 135, of Senate Bill No. 199, File 212, Act of 1893.

(Signed) Otto Stoll, Register of Deeds.

[fol. 149]

SUPREME COURT OF MICHIGAN

[Title omitted]

This cause is duly submitted on briefs by stipulation of counsel.

[fol. 150]

[Title omitted]

In this cause an opinion is filed, in accordance with which a decree will be hereafter entered.

[fol. 151] STATE OF MICHIGAN:

SUPREME COURT

[Title omitted]

Before the Entire Bench

OPINION—Filed December 29, 1922

CLARK, J.: Plaintiff by deed became the owner of 8 lots in Detroit. The deed was subject to "a real estate mortgage in the sum of \$200.00 on each lot or parcel of land aforesaid which the second party hereby assumes and agrees to pay." The mortgagees were Andrew J. Keary and Ella R. Keary, defendants. The mortgage contained a power of sale. Under the provisions of Chap. 249, Comp. Laws 1915, relating to foreclosure of mortgages by advertisement the premises were sold February 5, 1918, to the mortgagees. The sheriff made and executed a deed and delivered it to the Register of Deeds pursuant to the statute. At the expiration of one year, the period of redemption, the premises not having been redeemed, the Register delivered the deed to the purchasers as the law directs.

On March 8, 1919, the Soldiers and Sailors Civil Relief Act was [fol. 152] approved by the President. Section 3078¼a et seq. Comp. St. Ann. Supp. 1919.

On September 29, 1918, plaintiff entered the military service of the United States, and on May 4, 1919, he was honorably discharged. He filed a bill to redeem from the foreclosure having tendered the amount due. His bill was dismissed. He has appealed.

In measuring the period of redemption from foreclosure by advertisement should the period of military service be excluded?

We quote three sections of the Act:

Section 100. "That for the purpose of enabling the United States the more successfully to prosecute and carry on the war in which it is at present engaged, protection is hereby extended to persons in military service of the United States in order to prevent prejudice or injury to their civil rights during their term of service and to enable them to devote their entire energy to the military needs of

the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the continuance of the present war."

Section 205. "That the period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action shall have accrued prior to or during the period of such service."

Section 302. (1) "That the provisions of this section shall apply only to obligations originating prior to the date of approval of this Act and secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him.

(2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of non-payment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service, the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service—

(a) Stay the proceedings as provided in this Act; or

(b) Make such other disposition of the case as may be equitable to conserve the interests of all parties.

(3) No sale under a power of sale or under a judgment entered upon warrant of attorney to confess judgment contained in any such obligation shall be valid if made during the period of military service or within three months thereafter, unless upon an order of sale previously granted by the court and a return thereto made and approved by the court."

In dismissing the bill Judge Webster said:

"An examination of the Soldiers and Sailors Civil Relief Act has satisfied me that (whether designedly or through oversight) it has failed to cover the case of a statutory redemption period which began to run before the passage of the Act. This being true, plaintiff's right to redeem expired February 5th, 1919, * * *"

His opinion is fully supported by *Taylor v. McGregor State Bank*, 174 N. W. 893 (Minn.) where it was held, quoting from syllabus:

"The act * * * has no application to the nonjudicial proceeding for the foreclosure of a real estate mortgage by advertisement, as authorized by our statutes, which was fully completed by a sale of the mortgaged property prior to the commencement of the military service of soldier affected, though the period of redemption had not then expired."

And citing the above case a majority of the court held in *Wood v. Vogel*, 87 So. 174 (Ala.) quoting from syllabus:

"The right of redemption given by Code 1907, section 5746 et seq., from judicial and quasi judicial sales is a mere personal privilege, and must be exercised within the two years prescribed; hence the Soldiers' and Sailors' Relief Act (U. S. Com. St. 1918, Comp. St. Ann. Supp. 1919, section 3078 $\frac{1}{4}$ e), declaring that the period of military service shall not be included in computing any period of limitation, does not apply so as to extend the time within which the right of redemption may be exercised."

The Act does not in precise terms refer to a limitation or foreclosure such as this. If the Act must be strictly construed the opinion of the trial judge and the cases cited are right. But we think the Act should be construed liberally to accomplish the congressional purpose indicated in the section quoted. Of a somewhat similar statute it was said in *Stewart v. Kahn*, 11 Wall. 493:

[fol. 154] "A case may be within the meaning of a statute and not within its letter, and within its letter and not within its meaning. The intention of the lawmaker constitutes the law. The statute is a remedial one and should be construed liberally to carry out the wise and salutary purposes of its enactment."

We quote from *Ozawa v. United States* (U. S. Sup. Ct. decided Nov. 13, 1922):

"It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail.] See *Church of the Holy Trinity v. United States*, 143 U. S. 457; *Heydenfeldt v. Daney Gold, etc. Co.*, 93 U. S. 634, 638."

Of the Act it was said in *Steinfeld v. Mass. Bond and Ins. Co.*, 112 Atl. 800 (N. H.):

"It was not the legislative intent that the remedial purpose of the act should be defeated by a narrow or technical construction of the language used. *Halle v. Cavanaugh*, 111 Atl. 76."

And see *Clark v. Mechanics' Am. Natl. Bank*, 282 Fed. 589. The provision of our statute limiting the right of redemption from this foreclosure of mortgage to one year is not strictly a limitation of action. But relative to like limitations in analogous cases the Act has been construed liberally and, we think, rightly.

In *Kuehn v. Neugebauer*, 216 S. W. 259 (Tex.) it was said:

"On April 25, 1918, this cause was reversed and was remanded to the district court of Hays county for a new trial. 204 S. W. 369. No motion for rehearing was ever filed. A few days prior to August 30, 1919, the appellee paid the costs of the appeal, and requested the clerk of this court to issue a mandate to the trial court, in order that he might proceed with the prosecution of the cause, which request was refused by the clerk, upon the ground that the costs had not been paid within one year from the date of the judgment of this court, as required by article 1559, Revised Statutes."

and held, quoting from syllabus:

[fol. 155] "Soldiers' and Sailors' Civil Relief Act * * * authorizes the appellate court to grant a motion of an appellee, requesting it to instruct the clerk to issue a mandate, although costs had not been paid within one year from the reversal of a judgment in favor of appellee, it appearing that appellee entered the military service of the United States, before he became aware of reversal of his judgment, and served overseas until within three months of filing his motion, notwithstanding Rev. St. 1911, art. 1559, which leaves the appellate court without discretion to order the issuance of the mandate when costs are not paid within the year."

and also said:

"The writer thinks it is proper to add that he is of the opinion that article 3078 $\frac{1}{4}$ e, relating to limitations of actions, is also applicable to this case, and that the time limited by article 1559 for the payment of costs of an appeal and the taking out of a mandate did not run against appellee during the period of his military service. It is appreciated that this case probably does not fall within the strict letter of the last-named section, (205) and that it would be giving it a very liberal construction to hold it applicable here. However, in view of the broad purposes of the act expressed in the first section and the remedial nature of every provision in it, it is believed by the writer that the subject-matter of this motion falls within the spirit of article 3078 $\frac{1}{4}$ e, without further elaboration of the question."

In *Halle v. Cavanaugh*, 111 Atl. 76 (N. H.) there was motion to abate an action. The plaintiff died in the May term. The second term thereafter was the January term. The statute of that state provided that the administrator had two full terms in which to appear and assume prosecution of the suit. No one appearing the motion to abate was granted. The plaintiff's husband was the executor of her will. He had been drafted into the military service of the United States. That fact was relied upon under the act to toll the statute. The court said:

"The question here is whether this right to appear and prosecute a pending suit, which would abate but for such appearance, is covered by the federal statute, which in terms applies to "The bringing of any action." There is no other provision in the federal act which

would afford any relief to the person so situated. The general purpose of that statute is declared to be to extend protection to persons in the military service to prevent prejudice or injury to their civil rights during their term of service. *Id.* section 100. In view of this declared object, it is reasonable to conclude that the intent was to [fol. 156] include the procedure here involved. It follows that the husband had two full terms of court after the death of his wife, and exclusive of the time he was in the service in which to appear as an individual and assume the prosecution of this suit."

also

"The purpose of this act was the protection of persons in the military service of the United States, to prevent prejudice to their civil rights during their term of service by making provision for the *temporary suspension of legal proceedings and transactions relating thereto.*" (Italics supplied.)

In the Steinfield case the action was assumpsit on a policy of indemnity insurance. The policy provided that suit must be brought within 90 days after payment of loss. The suit was brought about 5 months after such payment but during this period plaintiff was in the military service. The section of the statute relied upon was section 205 above quoted. Defendant contended that the time for bringing suit was limited by the contract and not by "any law" and that therefore the statute did not apply.

It was held:

"The application of the federal act is not limited to statutory provisions. It applies to all law, and provides, in substance, that notwithstanding the state law limits the action as by contract agreed, that law shall not apply while the plaintiff is in the service."

And for instructive cases relative to the act see: *Hoffman v. Charlestown Five Cents Sav. Bank*, 121 N. E. 15; *Morse v. Stober*, 123 N. E. 780; *John Hancock Mut. Life Ins. Co. v. Lester*, 125 N. E. 594; *Olson v. Gowan Lenning Brown Co.*, 182 N. W. 929; *Studt v. Trueblood*, 181 N. W. 445; *Pierrard v. Hoch*, 191 Pac. 328; *Great Barrington Sav. Bank v. Brown*, 132 N. E. 398; *Erickson v. Macy*, 131 N. E. 744; *Hickernell v. Gregory*, 224 S. W. 691; *Austby v. Yellowstone Valley Mtg. Co.*, 207 Pac. 631; *Lewis v. Anthony Rep. Pub. Co.*, 208 Pac. 254; *Konkel v. State*, 170 N. W. 715, and 16 A. L. R. p. 1327; 9 A. L. R. p. 1 and p. 78. And the statutes of the state [fol. 157] must yield to the act. *Konkel v. State*, *supra*.

Had the foreclosure been in chancery, section 12676 et seq. Comp. Laws 1915, and had plaintiff's induction into the service occurred during the period of redemption there limited, the court, as was said in the Kuehn case, might have and doubtless would have entered an order staying the execution of its decree upon proper application or upon its own motion upon being apprised of requisite facts. No reason appears why the act should be applied to a chancery foreclosure and not to a foreclosure by advertisement. And we think

the act should be held to apply to the statutory limitation for redemption in the case at bar. The protection of those in the service by the suspension of legal proceedings and transactions which might prejudice their civil rights was the prime purpose of the act. We give effect here to the congressional intent by answering the above question affirmatively.

Defendant Ebert, his counsel says, "does not claim to be a bona fide purchaser for value without notice." The opinion of the trial judge correctly disposes of another question raised, which we need not discuss.

The decree is reversed. Decree will be entered here permitting redemption upon payment to defendants or to the clerk of this court of the amount of principal due, expenses of the foreclosure and unpaid interest to the date of the tender, (the amount we hope will be agreed upon by counsel, or it may be determined upon settlement of the decree) and setting aside the sheriff's deed and the deed to Ebert, with costs of both courts to plaintiff.

(S.) George N. Clark, Howard Wiest, Grant Fellows, John S. McDonald, Jno. E. Bird, Nelson Sharpe, J. H. Steere.

[File endorsement omitted.]

[fol. 158]

[Title omitted]

In this cause a motion for rehearing is duly submitted.

[fol. 159]

MICHIGAN SUPREME COURT

[Title omitted]

ORDER DENYING MOTION FOR REHEARING

A motion for rehearing having been heretofore submitted herein, it is hereby denied, with costs to plaintiff.

[fol. 160]

MICHIGAN SUPREME COURT

[Title omitted]

DECREE—June 12, 1923

This cause having been brought to this Court by appeal by the plaintiff from the Circuit Court for the County of Wayne, in Chancery, having been argued by counsel and due deliberation had thereon, It is now ordered, adjudged and decreed by the Court that the decree of the Circuit Court for the County of Wayne, in Chancery, be and the same is hereby reversed, vacated, set aside and held for

naught and that the deed from the sheriff of Wayne County to the defendants, Andrew J. Keary and Ella R. Keary, husband and wife, dated February 5, 1918, and recorded in the office of the Register of Deeds for the County of Wayne and State of Michigan on February 7, 1918, in Liber 1032 of Deeds on page 526; and the deed from the defendant Edmund L. Ebert, dated December 18, 1919, and recorded in the office of the Register of Deeds for the County of Wayne and State of Michigan on April 26, 1920, in Liber 1414 of deeds on page 265, be vacated, set aside and held for naught upon payment to the defendants or to the clerk of this Court within four (4) months from the date hereof of the sum of nineteen hundred forty-five and 39/100 (\$1,945.39) Dollars and that this decree or a true copy thereof be recorded in the office of the Register of Deeds for the County of Wayne and State of Michigan as a vacation of the deeds aforesaid and as a redemption from the mortgage, by the plaintiff herein of

Lots numbered thirty-two (32), thirty-five (35), thirty-seven (37), thirty-nine (39), forty-one (41), forty-three (43), forty-five (45), and forty-seven (47) in Sunnyside Subdivision of Quarter Section One (1), Ten Thousand Acre (10,000) Tract, Hamtramck, according to the plat thereof recorded December 31, 1892 in Liber 18 of Plats on page 2 in the office of the Register of Deeds for Wayne County, State of Michigan,

[fol. 161] and as a discharge of the lien thereof made and dated September 25, 1916, by Eddie A. Hullett and Nellie E. Hullett, his wife, to the defendants Andrew J. Keary and Ella R. Keary, his wife, recorded in the office of the Register of Deeds for the County of Wayne and State of Michigan on September 27, 1916, in Liber 795 of mortgages on page 506.

And it is further ordered, adjudged and decreed that the plaintiff do recover of and from the said defendants, his costs, both in the Wayne Circuit Court and in this Court, to be taxed, and that plaintiff have execution therefor.

It is further ordered, adjudged and decreed that if the plaintiff shall make default in payment of the sum aforesaid within the time hereinbefore limited to be paid as aforesaid, then in that case it is ordered, adjudged and decreed that the said plaintiff's Bill of Complaint be dismissed out of this Court with costs to be taxed and that the defendants have execution therefor.

[fol. 162] STATE OF MICHIGAN:

IN THE SUPREME COURT

[Title omitted]

CLERK'S CERTIFICATE

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record, and of all proceedings had and determined in the above entitled cause, by said Supreme Court; including the written decision and reasons therefor, signed by the Justices of said Court, and filed in my office, as appears of record and on file in said cause; that I have compared the same with the original, and it is a true transcript therefrom, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at the City of Lansing, this 28th day of June, in the year of our Lord, one thousand nine hundred and twenty-three.

Jay Mertz, Clerk of the Supreme Court of the State of Michigan. (Seal of the Supreme Court of Michigan, Lansing.)

[fol. 163]

[Title omitted]

Supplemental Return

[fol. 164] STATE OF MICHIGAN:

SUPREME COURT

[Title omitted]

MOTION FOR REHEARING AND BRIEF IN SUPPORT THEREOF

Now come Edmund L. Ebert, Andrew J. Keary and Ella R. Keary, defendants and appellees, by Thomas J. Bresnahan and Elmer H. Groofsema, their attorneys, and respectfully move this honorable court to grant them a rehearing of this cause or that the opinion filed in said cause be modified, for the following reasons:

(1) Because over thirty-two thousand (\$32,000.00) dollars' worth [fol. 165] of improvements are, by the decision of this court, awarded to plaintiff at the expense of the defendants without one cent being paid therefor, in that, there is now a dwelling house on each of the lots costing at an average of four thousand (\$4,000.00) dollars apiece.

Ogooshevitz v. Arnold, 197 Mich. 203; 12 C. J. 1254.

(2) Because these defendants could not comply with a decree of this court if entered in pursuant of the opinion herein rendered, in that, before the time of the filing of the bill of complaint in this case, the lots and dwelling houses thereon had been sold to purchasers for value without notice, who are not parties to this litigation (R. 89).

Marussa vs. Temerowski, 204 Mich. 271.

(3) Because the Soldiers and Sailors Civil Relief Act, as construed by this court in this cause, deprives these defendants of property without compensation and without due process of law, in violation of the Fifth Amendment and of the Fourteenth Amendment to the Constitution of the United States, in that no compensation is allowed them for the extension measured by the period of military service, there being no obligation upon the mortgagor to redeem, the sale having terminated the mutual contractual obligations created by the mortgage, and no obligation resting on the mortgagor to pay taxes or insurance expended by the mortgagee or purchaser after the sale in the event the mortgagor does elect to redeem.

Barnitz v. Beverly, 163 U. S. 118;

[fol. 166] Walton v. Hollywood, 47 Mich. 385

Wood v. Button, 205 Mich. 692;

Mundy v. Monroe, 1 Mich. 68;

Groesbeck v. Seeley, 13 Mich. 329;

Todd v. Davis, 32 Mich. 160.

27 Cyc. 1491.

(4) Because a sale under power of sale or by decree of a court in chancery, had prior to the passage of the Soldiers and Sailors Civil Relief Act, has at least as great an efficacy to finally terminate the period of redemption as a sale under and in pursuance of the provisions of Section 302 of the Soldiers' and Sailors' Civil Relief Act after the passage of the Act against a mortgagor not then in the military service.

John Hancock Mutual Life Insurance Co. v. Lester, 125 N. E. 594.

(5) Because the decision of this court is in conflict with the decisions of the United States Supreme Court as expressed in Barnitz v. Beverly, 163 U. S. 118, limiting the operation of statutes extending the redemption period to mortgage sales had subsequent to such legislative enactment.

This motion is based upon the files and records in said cause and briefs filed therein, the affidavits of H. Charles Edwards and Elmer H. Groefsema, and the opinion of this court. Further, in making this motion and in asking for the relief herein, it is not the intention of the defendants to waive any rights given them by the laws of the State of Michigan as heretofore construed or to acquiesce in the in-[fol. 167] terpretation given by the Supreme Court of the State of

Michigan to the Act of Congress known as the Soldiers' and Sailors' Civil Relief Act.

Thomas J. Bresnahan and Elmer H. Groefsema, Attorneys
for Defendants and Appellees. P. J. M. Hally, of Counsel.

STATE OF MICHIGAN:

IN THE SUPREME COURT

[Title omitted]

AFFIDAVIT OF E. H. GROEFSEMA

Elmer H. Groefsema, being duly sworn, deposes and says that he is the attorney for the defendants and appellees in the above entitled cause; that on the 13th of January, 1923, deponent addressed a letter to Mr. Louis Cohane, attorney for the plaintiff, as follows:

[fol. 168]

"Jan. 13, 1923.

Mr. Louis Cohane, Attorney-at-Law, 830 Penobscot Building, Detroit, Michigan.

DEAR MR. COHANE: Please accept my hearty congratulations upon your victory in the Supreme Court in the case of Dr. Harry Poston vs. Edmund L. Ebert et al.

In the Saturday, Jan. 6th issue of the Detroit Free Press, you are quoted to the effect that the improvements on the premises in question now belong to the plaintiff in the case, under the decision of the court, upon payment of the amount due on the mortgage.

We are informed by Mr. Edwards that each house has a present replacement value of approximately \$4,000.00. Our clients would like your written expression of opinion as to what plaintiff is now entitled to.

We trust that we may be favored with your reply at an early date.

Yours very truly, (Signed) Elmer H. Groefsema."

Deponent further says that on the 15th of January, 1923, in answer to the aforesaid letter, he received from Mr. Louis Cohane the following letter:

[fol. 169]

"January 15th, 1923.

Mr. Elmer H. Groefsema, Attorney and Counselor, 329 Majestic Building, Detroit, Michigan.

DEAR MR. GROEFSEMA:

In re Poston v. Keary

I am very appreciative of the fine spirit of your letter of congratulations upon the decision of the Supreme Court in the case of Poston vs. Ebert et al.

Experience in public life makes me suggest that newspaper quotations are often inaccurate and unauthorized.

I would not attempt to give a legal opinion without thorough investigation of the law.

As the matter now stands, I am only in a position to say that under the decision of the Michigan Supreme Court and as between the parties to the case, the plaintiff is permitted to redeem 'upon payment to defendant or to the Clerk of this Court of the amount of principal due, expenses of the foreclosure and unpaid interest to the date of the tender, * * * and setting aside the Sheriff's Deed and deed to Ebert with costs of both courts to plaintiff.'

I trust that the foregoing covers the expression of opinion which your clients wish to obtain from me.

In the meantime, you will recall that I have been waiting for several weeks for you to take up with me the matter of agreeing upon the amount necessary to redeem, as suggested by the Supreme Court, in order that a consent decree may be filed. Please let me hear from you with reference to this at once.

[fol. 170] With the kindest of personal regards, I remain,

Cordially yours, (Signed) Louis Cohane."

Elmer H. Groefsema.

Notary's certificate omitted.

STATE OF MICHIGAN:

SUPREME COURT

[Title omitted]

AFFIDAVIT OF H. C. EDWARDS

H. Charles Edwards of the City of Detroit, County and State aforesaid, being duly sworn, deposes and says: That he now is and for upwards of three years last past has been engaged in the building business in the City of Detroit.

[fol. 171] Deponent further says that on the 15th day of October A. D. 1919, he purchased on land contract from Edmund L. Ebert, one of the above named defendants, the following parcels of land, to-wit:

Lots numbered thirty-two (32), thirty-five (35), thirty-seven (37), thirty-nine (39), forty-one (41), forty-three (43) and forty-seven (47) in Sunnyside Subdivision of Quarter (¼) Section one (1), Ten Thousand Acre Tract, Hamtramck, according to the plat thereof recorded December 31, 1892, in Liber Eighteen (18) of Plats, on page Two (2) in the Office of the Register of Deeds for Wayne County, Michigan.

Deponent further says that the purchase price was \$550.00 per lot, and that said lots at that time were vacant.

Deponent further says that on the 1st day of March, 1920, deponent commenced building operations on said lots. That all of said houses were completed, sold and occupied prior to August 1, 1920.

Deponent further says that Ezra H. Fry, attorney, examined the abstract for deponent prior to said purchase of said lots.

Deponent further says that on each of said lots there is now a dwelling house built by deponent, and that the present value of replacement on each of said houses is at least \$4,000.00. That deponent does not at this time own any of said lots, and that the same have been resold by deponent, to individual purchasers.

Further deponent says not.

H. Charles Edwards.

Notary's certificate omitted.

[fol. 174] STATE OF MICHIGAN:

SUPREME COURT

[Title omitted]

OBJECTIONS AND BRIEF OPPOSING "MOTION FOR RE-HEARING AND BRIEF IN SUPPORT THEREOF"

Now comes Dr. Harry P. Poston, plaintiff in the above entitled cause, by Cohane, Rhodes, Garvett and Frankel, as his attorneys, and files these as his objections to the "Motion for Re-Hearing and Brief in Support Thereof," heretofore filed in the cause by appellees therein, for the following reasons:

[fol. 175] 1. Because the matters set forth in said Motion have already been adjudicated and specifically passed upon by this court.

2. Because the case of

Barnitz v. Beverly, 163 U. S. 118,

relied upon by defendants, has no application to the case at bar, because it construes a State statute impairing the obligation of a mortgage contract, while this case involves an Act of Congress as a war measure of the United States under its war powers.

3. Because defendants do not claim to have, and have not, erected a dollar's worth of improvements upon the property involved in the above entitled cause.

4. Because the defendants do not come into this Court of Equity and Conscience "with clean hands."

5. Because, quoting from the opinion of this court, "Defendant Ebert, his counsel says, 'does not claim to be a bona fide purchaser for value without notice.' The opinion of the trial judge correctly disposes of another question raised, which we need not discuss."

6. Because H. Charles Edwards, who claims to have erected buildings on said property, is not a party in said cause and his rights, or claim of rights, are not before this court for adjudication, so that it is not proper for plaintiff to make answer thereto in this proceeding.

[fol. 176] 7. Because H. Charles Edwards' remedy, if any, is as against the defendants in this cause, through whom he derives title by warranty deeds.

8. Because H. Charles Edwards, before he purchased the property from defendants, had actual notice, and constructive notice by record in the Wayne County Register of Deeds Office, of plaintiff's rights in the said property.

9. Because, "Where a purchaser makes improvements while there is a right of redemption, he cannot have credit therefor in the event of redemption. * * * The purpose of this rule is to prevent the purchaser from increasing the burrden of the redemptioner."

Cowan Tent No. 61 v. Treesh (Ind. 1922), 136 N. E. 93-99.

(The strength of this case as authority will be more clear from the facts set forth in the dissenting opinion therein).

10. Because this court could have, should have, and should now, by an addenda opinion filed with its denial of the motion for rehearing, grant plaintiff the same relief its written opinion on file allows, but basing its decision also upon the general equitable jurisdiction of this court, as a matter of law, independent of and in addition to the authority of this court under the Soldiers and Sailors Civil Relief Act, under the testimony in the record showing plaintiffs' equities, and defendants' iniquities and conspiracy to defraud.

[fol. 177] Millard v. Truax, 50 Mich. 343;

McIntyre v. Wyckoff, 119 Mich. 557;

Brown v. Burney, 128 Mich. 204;

Williams v. Bolt, 170 Mich. 517;

Dalton v. Weber, 203 Mich. 453;

Hunt v. Rousmanier, 8 Wheat. 174 (U. S. Supreme Court)
5 L. Ed. 589, 600;

Schroeder v. Young, 161 U. S. 334,

as analyzed and set forth in our original brief from page 43 on. (This court has not yet passed upon the Michigan law applicable to this case as raised in our brief).

These objections are based upon the files and records in the above entitled cause.

Cohane, Rhodes, Garvett, & Frankel, Attorneys for Plaintiff,
830 Penobscot Building, Detroit, Michigan. Louis Co-
hane, of Counsel.

Dated at Detroit, February 24, 1923.

IMPORTANT DATES

Feb. 5, 1918. Mortgage foreclosure sale.

Feb. 5, 1919. Expiration of year for redemption, except for military service.

[fol. 178]

May 14, 1919. Plaintiff discharged from military service.

July 24, 1919. Exhibit 11 (R. 126), defendant Keary's letter stating the amount necessary to redeem.

Oct. 15, 1919. This is the date upon which Edwards, in his affidavit in the motion for rehearing, claims to have purchased the property from Ebert at \$550 a lot, \$50 down and the balance in six months, a month before either Ebert or Keary claim Ebert purchased it (Ebert, R. 106).

Nov. 20, 1919. Date of plaintiff's tender to defendants to redeem from mortgage foreclosure sale following negotiations by defendants for purchase of property from plaintiff, by the lower court found to constitute an estoppel (Opinion of Court, R. 112, 116) and affirmed in the opinion of this court.

Dec. 17, 1919. Record with Wayne County Register of Deeds of plaintiff's right to redeem, "said right to redemption still subsisting in said first party by reason of his having been in the military service during the time when otherwise his right to redemption would have been foreclosed by the lapse of time" (Exhibit 7, R. 124).

[fol. 179]

Dec. 18, 1919. Date of Kearys' deed to Ebert. (Defendants' Exhibit G, R. 146).

Dec. 18, 1919. Date Notary Public certifies deed was acknowledged before him.

Mar. 29, 1920. Date of Notary Public's commission from the Governor of the State, under the laws of the State.

Mar. 29, 1924. Date Notary Public certifies his commission expires

Apr. 26, 1920. Date of record in Wayne County Register of Deeds Office of Kearys' deed to Ebert (Defendants' Exhibit G, R. 146).

May 1, 1920. First deed from Ebert to Edwards of any of the lots in this case (lot 45), recorded in Wayne County Register of Deeds Office, liber 1416, page 385.

Dec. 31, 1919. Keary still paying taxes on this property (Defendants' Exhibit D, R. 143).

Jan. 30, 1920. Keary still paying taxes on this property (Defendants' Exhibit B, R. 138).

Mar. 1, 1920. Date Edwards swears in affidavit on motion for rehearing he started building operations.

[fol. 180]

Mar. 16, 1920. Date official record to defendants at their request of plaintiff's military service (Defendants' Exhibits E and F, R. 144-145), subsequent to which Ebert and Keary swear they soul property to Edwards (R. 144-145), although Edwards claims to have purchased on October 15, 1919.

VARIOUS DEEDS OF PROPERTY IN QUESTION FROM EBERT TO EDWARDS
AS RECORDED IN THE WAYNE COUNTY REGISTER OF DEEDS
OFFICE

May 1, 1920. Lot 45.

July 20, 1920. Lot 39.

Aug. 2, 1920. Lots 32, 35 and 41.

Nov. 3, 1920. Lot 47.

Lots 37 and 43.

[fol. 181]

[Title omitted]

In this cause a motion for rehearing is duly submitted.

[fol. 182] STATE OF MICHIGAN:

SUPREME COURT

[Title omitted]

Before the Entire Bench

OPINION ON MOTION FOR REHEARING—Filed April 27, 1923

PER CURIAM: A motion for rehearing has been filed. In it constitutional questions are discussed which were not urged in the original brief. Under numerous decisions of this Court, constitutional questions may not be raised for the first time on motion for rehearing. It is also made to appear that the lots involved have been sold and substantial houses erected on them. The purchasers, however, are not before us. They are in possession. Unless the parties come to an adjustment, we may assume plaintiff will bring ejectment to recover possession. In such action the question of whether such purchasers are entitled to the benefits of sections 13211 et seq. C. L. 1915, and if so to what extent, will be before the Court. Such purchasers not being parties to this proceeding their rights can not be here adjudicated. The motion for rehearing will be denied.

[File endorsement omitted.]

[fol. 183]

[Title omitted]

A motion for rehearing having been heretofore submitted herein, it is hereby denied, with costs to plaintiff.

[fol. 184]

MICHIGAN SUPREME COURT

[Title omitted]

ORDER RE SATISFACTION OF DECREE

On reading and filing the stipulation of the parties to the above entitled cause, by their respective counsel, and in accordance therewith, it appearing therefrom that a petition for certiorari in the above entitled cause has been filed with and submitted to the United States Supreme Court: It is by the Court now here ordered that the decree of this Court heretofore and on June 12th, 1923, filed in the above entitled cause may be satisfied by a tender by the plaintiff and appellant of the redemption money in said decree mentioned to the defendants or as in said decree provided at any time subsequently hereto and within thirty days after the denial of the writ of certiorari by the United States Supreme Court, should it be denied; and should the writ of certiorari be granted by the United States Supreme Court, then at any time subsequent hereto and within thirty (30) days after the affirmance of the decision of the Michigan Supreme Court by the United States Supreme Court, should it be affirmed; it being the purpose hereof also in accordance with the intent and purpose of the parties to the above entitled cause that tender of the redemption money to the above named defendants as in said decree provided may be made at any time subsequent hereto, and within thirty (30) days after a final disposition of this matter by a decision of the United States Supreme Court with like force and effect as though made as provided in the decree of this Court now on file in this cause.

[fol. 185]

SUPREME COURT OF MICHIGAN

[Title omitted]

CLERK'S CERTIFICATE

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify and return in pursuance of the written agreement of the attorneys for the respective parties hereto that the transcript of the record furnished with the application for a writ of certiorari in this cause is a full, true and complete transcript of all of the proceedings had and determined in said cause, except the proceedings had in this Court on motion for rehearing; I hereby further certify that the annexed and foregoing is a true copy of the motion for rehearing, the objections thereto, the order of submission, the opinion of the Court thereon, and the order of denial, together with an order

fixing the time when the decree should go into effect. I further certify that that portion of the objections to the motion for rehearing, headed "Important Dates," was objected to by counsel for plaintiffs in certiorari as not a proper part of the objections to said motion and is returned herewith by me upon the order of the Chief Justice of this Court. I further certify that I have compared the papers sent herewith with the originals on file in my office and that each is a true and correct transcript of the original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at the City of Lansing, this seventh day of December, in the year of our Lord, one thousand nine hundred and twenty-three.

Jay Mertz, Clerk. (Seal of the Supreme Court of Michigan, Lansing.)

[fol. 186] UNITED STATES OF AMERICA, ss:

WRIT OF CERTIORARI AND RETURN—Filed December 11, 1923

(Seal of the Supreme Court of the United States.)

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Michigan, Greeting:

Being informed that there is now pending before you a suit in which Harry P. Poston is appellant, and Edmund L. Ebert, Andrew J. Keary, and Ella R. Keary are appellees, No. 30,420, which suit was removed into the said Supreme Court by virtue of an appeal from the Circuit Court for the County of Wayne, In Chancery, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United [fol. 187] States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[fol. 188] To the Supreme Court of the United States:

The execution of the within writ appears by the transcript of Record hereto annexed.

Dated December 7th, 1923.

Jay Mertz, Clerk of the Supreme Court of the State of Michigan. (Seal of the Supreme Court of Michigan, Lansing.)

[fol. 189] [File endorsement omitted.]

